

**BEFORE THE MONTGOMERY COUNTY  
BOARD OF APPEALS  
OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS  
Stella B. Werner Council Office Building  
Rockville, Maryland 20850  
(240) 777-6660**

**IN THE MATTER OF SIENA LEARNING, LLC \***

**d/b/a THE SIENA SCHOOL \***

Petitioner \*

Clay Kaufman \*

Craig Hedberg \*

Aaron Smith \*

F. Thomson Wheeler \*

For the Petitioner \*

Jody S. Kline, Esquire \*

Attorney for the Petitioner \*

\*\*\*\*\*

Margot Cook \*

J. David Meininger \*

In Support of the Petition \*

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Board of Appeals No. S-2822  
(OZAH Case No. 12-11)

Before: Martin L. Grossman, Hearing Examiner

**HEARING EXAMINER'S REPORT AND RECOMMENDATION**

**TABLE OF CONTENTS**

	<b>Page</b>
I. STATEMENT OF THE CASE .....	2
II. FACTUAL BACKGROUND .....	4
A. The Subject Property .....	4
B. The Neighborhood .....	7
C. The Master Plan .....	8
D. Proposed Use .....	10
1. Summary of Proposed Use:.....	10
2. Revised Site Plans: .....	17
3. The Height Issue: .....	22
4. Landscaping and Lighting: .....	27
5. Signage: .....	31
6. Operations—Phasing, Enrollment, Staffing, Hours, Coordination and Special Events:.....	35
7. Parking, Pick-up, Drop-off, Shading and Waiver Issues: .....	42
8. Public Facilities, Including Transportation, Water and Sewer:.....	48
E. The Environment.....	52
F. Community Response.....	53
III. SUMMARY OF THE HEARING .....	54
IV. FINDINGS AND CONCLUSIONS .....	72
A. Standard for Evaluation .....	73
B. General Standards .....	76
C. Specific Standards: Educational Institutions, Private .....	82
D. Other Applicable Standards .....	90
V. RECOMMENDATIONS .....	94

## **I. STATEMENT OF THE CASE**

On August 10, 2011, Petitioner, Siena Learning, LLC, d/b/a “The Siena School,” filed a Petition for a Private Educational Institution Special Exception to allow operation of a private school for up to 225 students and 55 employees, located at 1300 Forest Glen Road, Silver Spring, Maryland. The Siena School already exists and currently operates at the Montgomery Hills Baptist Church, located nearby, but it needs a larger facility to accommodate growth. The Special Exception is sought pursuant to Zoning Code Section 59-G-2.19 (Educational Institutions, Private).

The subject site is located on 2.7 acres in the R-60 Zone. A portion of the site (1.2 acres) is owned by the Boys and Girls Club of Greater Washington, Inc., and Petitioner is the contract purchaser of that land (Exhibit 9(a)). The remainder (1.5 acres) is owned by the Maryland-National Capital Park and Planning Commission (M-NCPPC), and Petitioner would be the lessee (Exhibit 9(b)). The Boys and Girls Club has existed on the subject property under a private club special exception use, CBA-230 and CBA-541, since the mid-1950s (previously known as the Boys’ Club of Silver Spring), and it would continue for some time to offer its before- and after-school program, as well as its summer camp, in a leased portion of the school.<sup>1</sup>

On September 21, 2011, the matter was noticed for a hearing to be held on January 6, 2012 (Exhibit 11). Petitioner subsequently moved to amend its application and added a request to waive some parking standards (Exhibit 15), and a notice of that amendment was issued on December 23, 2011 (Exhibit 22). The motion to amend was unopposed, and thus was automatically granted as specified in the notice.

Four letters of support for the petition were received on November 30, 2011 (Exhibits 16(a) – (d)). These included two letters of support from neighbors, and letters of support from the

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<sup>1</sup> Presumably, the Private Club special exceptions (CBA-230 and CBA-541) would have to be administratively modified by the Board to permit the proposed sharing arrangement with the Siena School.

South Four Corners Civic Association (SFCCA), the Forest Grove Citizens' Association (FGCA) and the Northmont Citizens' Association (NCA).

On April 30, 2011, the Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) filed its Report (Exhibit 17)<sup>2</sup>, which recommended approval of the petition, with conditions which have been included in Part V of this report.

The Montgomery County Planning Board reviewed this case on December 15, 2011, and unanimously recommended approval of the petition, as summarized in its letter to the Board of Appeals dated December 21, 2011. Exhibit 19(a). The Planning Board recommended a modification to the hours of operations condition proposed by Technical Staff, and suggested issues to be considered by the Hearing Examiner regarding the impacts on traffic when Petitioner's operations coincide with those of the Boys and Girls Club.

The hearing proceeded as scheduled on January 6, 2012. Petitioner called four witnesses, and two witnesses from the community testified in support of the petition (although one of them expressed some concerns about traffic and parking, and management of nighttime activity). Tr. 31. No opposition appeared at the hearing, and no opposition letters have been received.

The record was held open for revisions to the Statement of Operations resulting from the hearing and for the filing of additional materials by January 10, 2012, including a Transportation Management Plan (TMP), as requested by the Hearing Examiner. Other parties and Technical Staff were given until January 25, 2012, to comment on the new filings. Technical Staff was unable to complete its review by January 25, but filed suggested changes to the proposed TMP on January 26, 2012. Petitioner timely filed proposed revisions to the TMP to address Staff's

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<sup>2</sup> The Technical Staff Report, Exhibit 17, is frequently quoted and paraphrased herein. Some errors in the Technical Staff report (at p. 7) and in its Attachment 6, were corrected by Staff in a later submission. Exhibit 21. These were directly entered onto the Staff report in the file by the Hearing Examiner to avoid confusion. The Hearing Examiner also made some corrections of typographical mistakes on page 1 of the Staff Report in the file, all of which he announced at the hearing. Tr. 8-9.

concerns on January 31, 2012 (Exhibits 35 and 36), and Staff e-mailed its approval of the revised TMP on February 6, 2012. Exhibit 37. On February 7, 2012, the Hearing Examiner issued an order reopening the record for 10 days for comments by interested parties. Exhibit 38.

Additionally, on February 8, 2012, the Hearing Examiner asked Petitioner to file more detailed information about special events expected at the school because that information was missing from the Revised Statement of Operations. Exhibit 39. Petitioner did so on February 9, 2012. Exhibit 40. On February 17, Petitioner also filed a legal argument regarding height issues (Exhibit 42), and a corrected Site Plan (Exhibit 43).<sup>3</sup> At the Hearing Examiner's request, Petitioner filed additional descriptions and diagrams of planned signage on February 21, 2012. Exhibit 44. The record was reopened on February 22 for any comments from Technical Staff and interested parties. Exhibit 45. It closed again on March 5, 2012, with no objections to the changes.

As will appear more fully below, Petitioner fully addressed concerns raised by the community and has demonstrated compliance with all applicable standards, with the possible exception of the height of the building. The Hearing Examiner therefore recommends approval, subject to the conditions recommended in Part V of this report, including one regarding the height issue, which is discussed in Part II.D.3. of this report. To the extent a waiver of parking regulations is needed, the record demonstrates that it should be granted.

## **II. FACTUAL BACKGROUND**

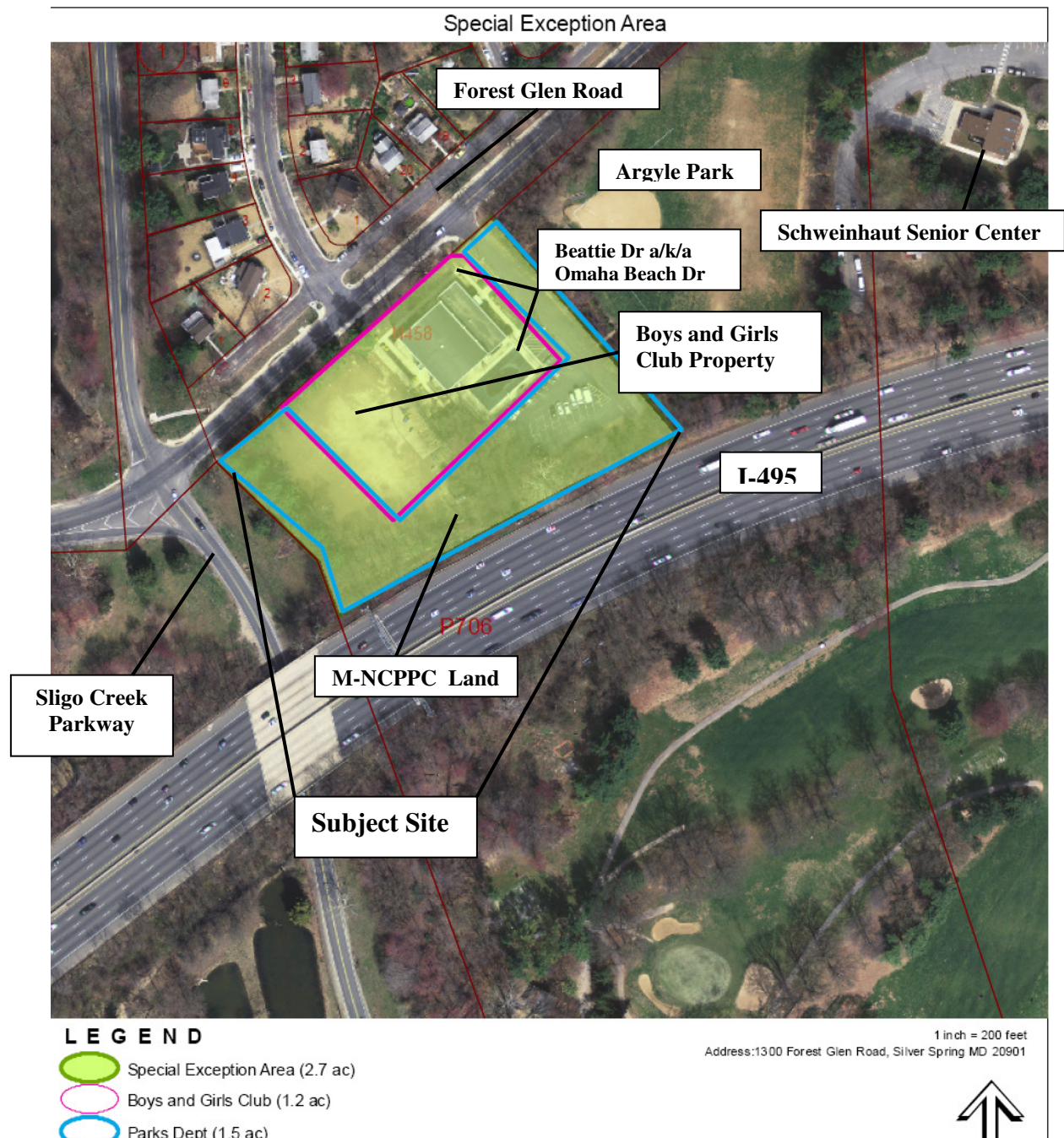
### **A. The Subject Property**

The subject site is located in the R-60 Zone, on the southern side of Forest Glen Road, about 90 feet east of its intersection with Sligo Creek Parkway. It occupies a total of 2.7 acres, which is comprised of 1.2 acres owned by the Boys and Girls Club (Parcel N458), and 1.5 acres

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<sup>3</sup> The final Special Exception Site Plan (Exhibit 43(a)) corrected an error in the Development Standards Table regarding building height, which did not change Petitioner's position as set forth at the hearing and in earlier submissions.

owned by the M-NCPPC (part of Parcel P706).<sup>4</sup> The entire site can be seen below on an aerial photograph appended to the Staff Report as Attachment 1:



<sup>4</sup> The remainder of Parcel P706, which is bisected by I-495, is M-NCPPC parkland and is used predominantly as active recreation space. The northern portion of the site includes baseball/softball diamond and a rectangular multipurpose field, as well as the parking and some field space associated with the Boys and Girls Club facility. The southern portion of the property is used as a portion of the Sligo Creek Golf Course. Exhibit 17, p. 7.



Parcel N458 contains an existing one-story brick building, which houses the Boys and Girls Club. Staff notes that the site is connected to the adjacent parks with staircases and walkways to allow for cross-access. Exhibit 17, p. 5. Photographs of the subject site and its immediate environs were appended to the Staff Report as Attachment 4:



Figure 1 Looking southwest from Forest Glen Rd



Figure 4 East Side of Boys and Girls Club



Figure 2 Looking northeast from Sligo Creek Pkwy



Figure 5 Grass median between Forest Glen Rd and adjacent homes



Figure 3 South side of the building from Forest Glen Rd

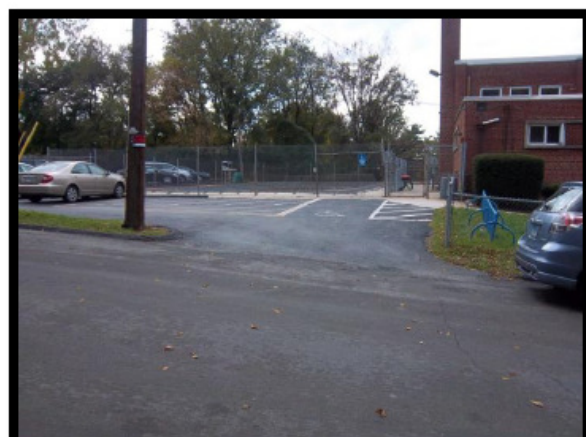


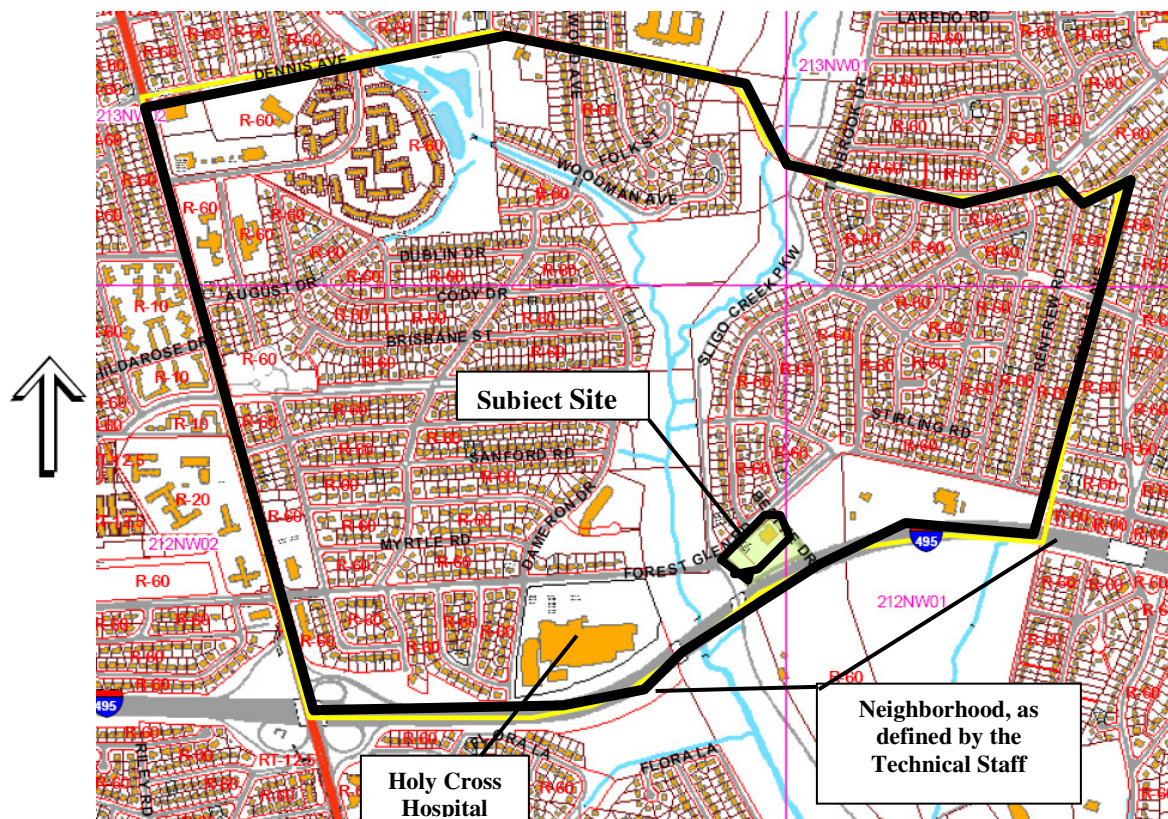
Figure 6 Pool area (to be removed and replaced with 20,000 SF addition)



The property is within the Sligo Creek watershed, but is not within a special protection area; nor does it have any streams or wetlands. Exhibit 17, p. 7. It does have some forest, but it will not be affected by the proposed use. Tr. 99-101. According to Technical Staff, “the site sits up from the road, and there are steep slopes to the north and west of the special exception area.” Exhibit 17, p. 5. Petitioner’s civil engineer, Aaron Smith, noted that the elevation rises away from the school building, adjacent to Forest Glen Road and towards the Capital Beltway to the south. It then drops off to the west, to the lower playing fields, so there is a rather significant grade on the access drive leading into the property from Forest Glen Road. The parking lot in the back, on the southern end of the property, is fairly level, and everything drains towards Sligo Creek to the west. Tr. 101.

### B. The Neighborhood

Technical Staff proposed to define the neighborhood as bordered by Dennis Avenue to the north, I-495 (Beltway) to the south, Dallas Avenue to the east, and Georgia Avenue (MD 97) to the west, as shown in a Surrounding Area Map appended to the Staff Report as Attachment 5:



Petitioner adopted Technical Staff's recommended definition of the neighborhood (Tr. 16-17), and the Hearing Examiner does as well. Although the defined neighborhood stretches somewhat further to the north than might be expected, Petitioner's transportation planner, Craig Hedberg, noted that traffic from the north destined for the Siena School turns from Georgia Avenue onto eastbound Dennis Avenue (the northwestern extremity of the defined neighborhood) and then proceeds south on Sligo Creek Parkway (Ex. 13(a), p. 3), so it is reasonable to include the extended area proposed by Staff. The neighborhood is primarily zoned R-60. Staff notes that there are sidewalks along both sides of Forest Glen Road, and there is a median separating the roadway from the residential driveway accesses. Exhibit 17, p. 5. Residential homes are to the north; the Sligo Creek stream valley buffer and Holy Cross Hospital are to the west; the Argyle Park/Schweinhaut Senior Center is to the east; and the Beltway (I-495) is to the south. In other words, the subject site is bordered by residential properties only to the north, across Forest Glen Road.

There are numerous special exceptions in the area, and "Staff identified 43 applications on 31 different properties for special exception uses within the staff-defined neighborhood, including the proposed site, primarily home-based uses, such as child daycare, medical, dental or general offices, home occupations, and accessory apartments. Holy Cross Hospital is within the defined neighborhood, and includes several modifications." Exhibit 17, p. 5. Nevertheless, there has been no contention in this case that there is an over-concentration of special exceptions in the area.

### **C. The Master Plan**

The subject site is located in the area covered by the 1986 Four Corners Sector Plan.<sup>5</sup> Technical Staff found that although the Sector Plan contains no specific recommendations for the

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<sup>5</sup> Although Petitioner filed an interim edition to the Four Corners Master Plan of 1996 (Exhibit 7), the Master Plan that is actually applicable is the 1986 Four Corners Sector Plan, because the 1996 Amendment to the Sector Plan (now called a Master Plan) inexplicably left out the area where the subject site is located. Technical Staff advises that 1986 Four Corners Sector Plan is still in effect in that area.



site, “the proposed use will be consistent with the overall goal of the Sector Plan.” Exhibit 17, p.

9. The current use, the Boys and Girls Club, is mentioned on Page 63 of the Sector Plan as providing “[a]dditional recreation and community services” within the Four Corners neighborhood.

Staff notes that the Sector Plan contains overall general recommendations to preserve and protect the sense of community and expresses the goal of “assuring the existing and future residents of the community are protected from intrusions of traffic, noise and pressures to redevelop existing stable, low-density uses” (Plan page 29). The Sector Plan also suggests that the development of the community should provide a full range of housing and other services for all of its residents. With regard to “Community Facilities,” the Plan provides, at page 58:

*In an area such as Four Corners, which is predominantly built-up and which already has a range of community services, the Sector Plan is primarily concerned with the following:*

- *provision of expanded facilities in parts of the Sector Plan area that are deficient;*
- *provision of new facilities to service new growth;*
- *re-design of facilities that are obsolete or unable to meet future current and [sic] demands; and*
- *broadening of the range of facilities and services provided to meet the demands of a varied population.*

Technical Staff concluded (Exhibit 17, p. 5):

Staff believes that the reuse of the existing building and change of use will continue to offer the Four Corners community with a full range of services. The school provides a college-preparatory program for students with mild to moderate language-based learning differences. Additionally, the school intends to continue providing its summer camps, expanding to children within the community, who do not attend during the school year. According to the applicant’s submittal, the Boys and Girls Club of Silver Spring will also continue their services for the short-term, providing before- and after-care programs as well as other recreational opportunities for the neighborhood. Staff believes that these proposed activities meet the Plan’s objectives of providing services for all while protecting the existing neighborhoods from negative impacts of new development.

The Hearing Examiner agrees that the relocation of the Siena School in conjunction with

the activities of the Boys and Girls Club would be consistent with the goals and objectives of the 1986 Four Corners Sector Plan. Moreover, the Sector Plan does not recommend rezoning the area, and the existing R-60 Zone permits the proposed use as a special exception. Based on this record, the Hearing Examiner concludes that the application is consistent with the recommendations contained in the Sector Plan.

#### **D. Proposed Use**

##### **1. Summary of Proposed Use:**

The Petitioner seeks a special exception pursuant to Section 59-G-2.19 of the Zoning Ordinance to permit the operation at 1300 Forest Glen Road, Silver Spring, of a private educational institution, the Siena School, for up to 225 children, grades 4 to 12, and 55 Staff. A summer program of the same size would also be allowed under Petitioner's proposal. The Siena School was founded in 2006, for 15 students, with the goal of "educating bright college bound students with mild to moderate language-based learning differences." Tr. 34-36. It is currently operating at a nearby location, the Montgomery Hills Baptist Church, with an enrollment of 78 students, but it needs more room for expansion.<sup>6</sup>

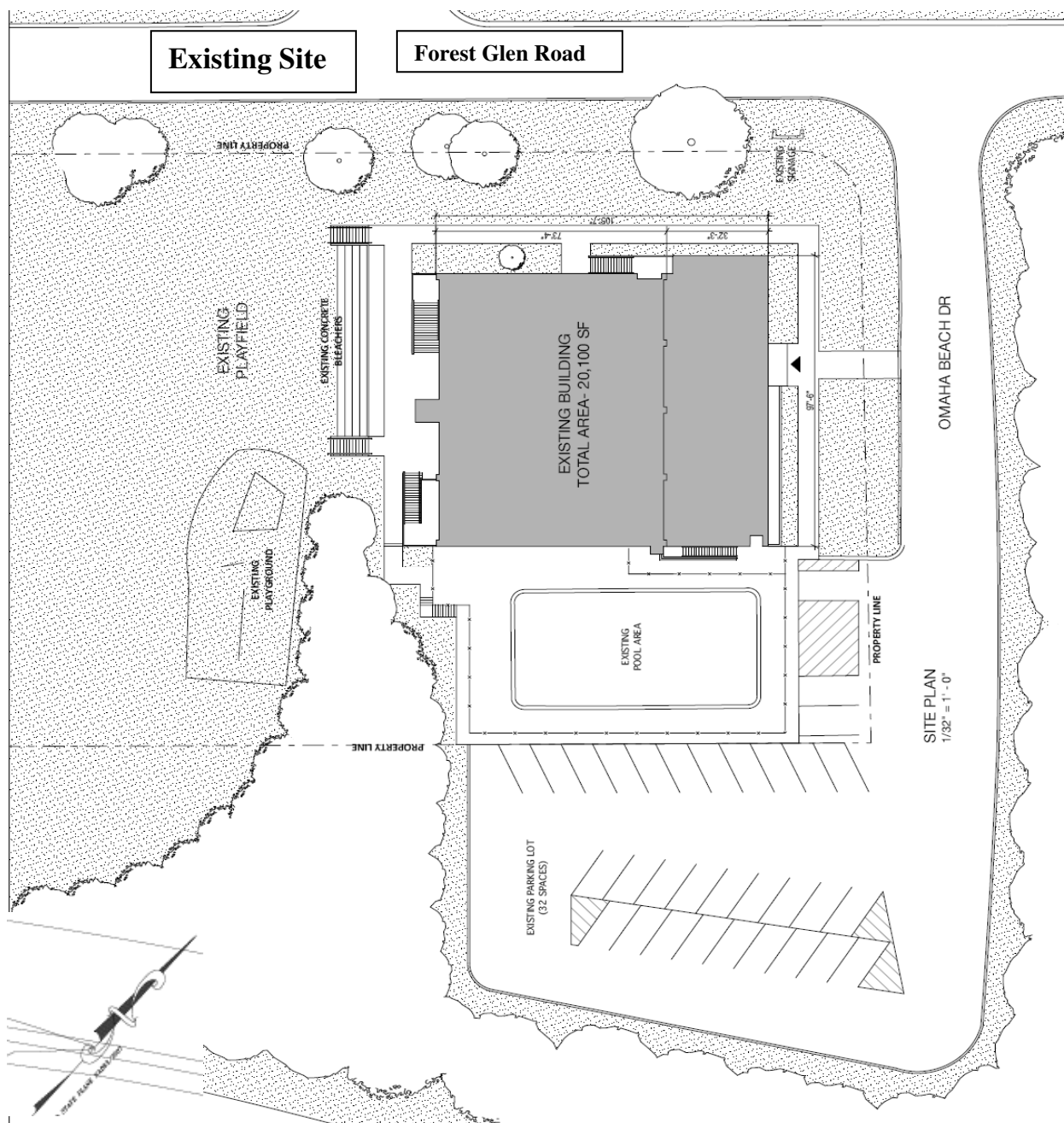
As described by Technical Staff (Exhibit 17, p. 3), the total project of approximately 40,000 square feet will occur over three phases. Phase I includes the renovation of the current 20,000-square foot, one-story building, currently occupied by the Boys and Girls Club, mostly to bring it up to Code. Phase II includes removal of the in-ground pool in order to add a two-story, 20,000-square foot academic wing on the Boys and Girls Club site, and redesign of the existing parking area to include landscaping and an enhanced circulation system; Phase III will add a 3,300-square foot second floor along the east side of the building. Operational details will be

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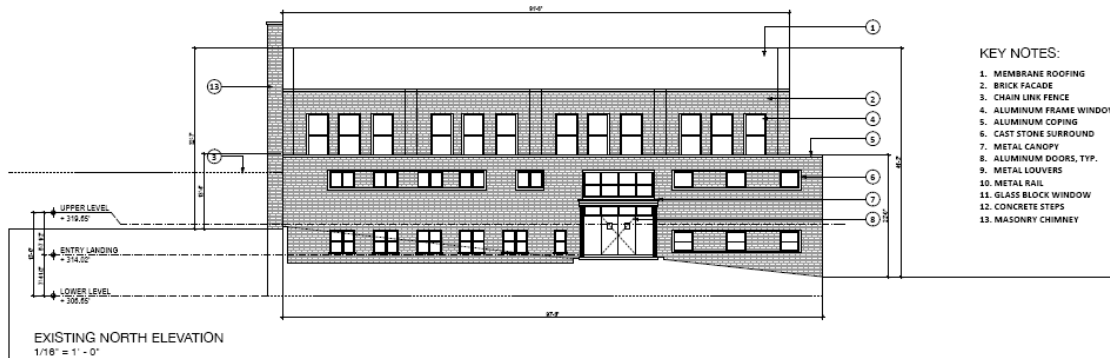
<sup>6</sup> The school is currently located on property owned by a religious organization and therefore is exempt from the requirement for a special exception pursuant to Zoning Ordinance §59-G-2.19(e).

discussed in Section II.D.6. of this report. Suffice it to say at this point that initially the Siena School and the Boys and Girls Club will share the use of the building; however, Petitioner expects to eventually extinguish the Boys and Girls Club's private club special exception and incorporate it into Siena School's special exception under the other uses that are permitted with schools. Tr. 16.

The following architectural drawings (from Exhibit 4) demonstrate the proposed progression from the existing site to Phase I and then to Phases II and III:

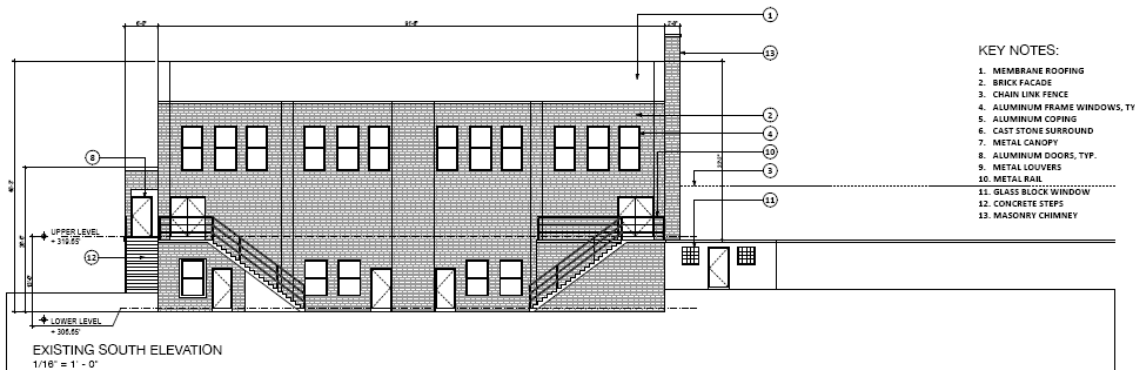
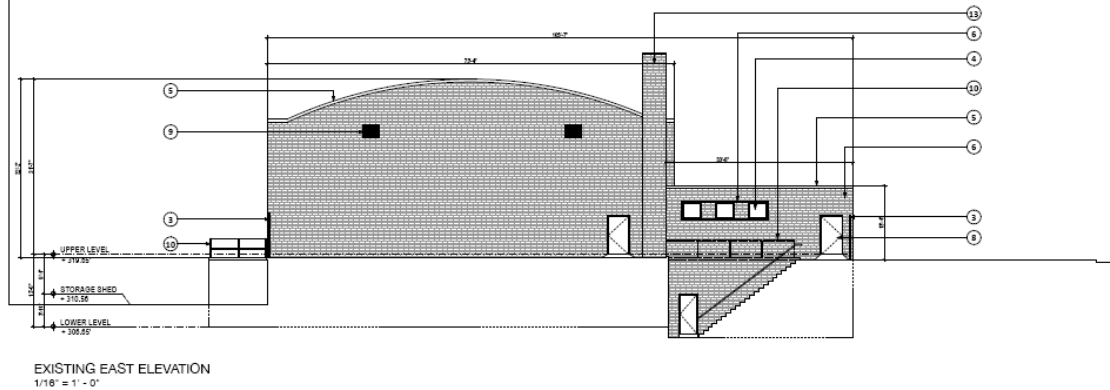


# Existing Elevations



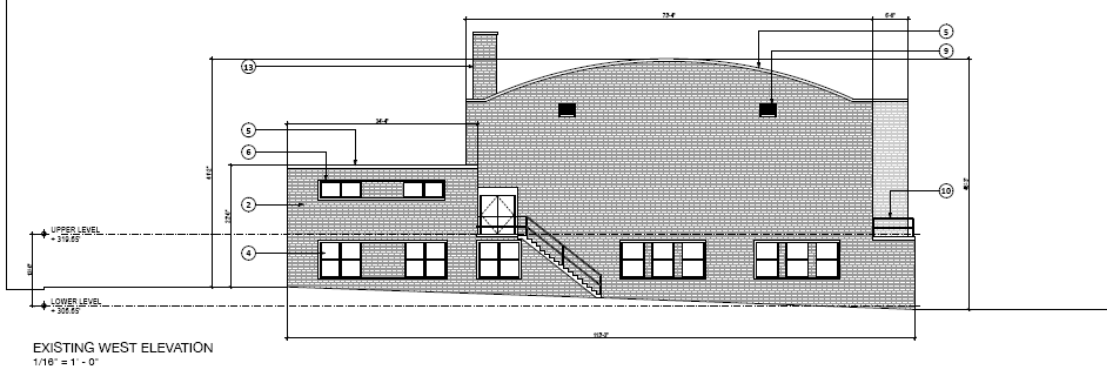
## KEY NOTES:

1. MEMBRANE ROOFING
2. BRICK FACADE
3. CHAIN LINK FENCE
4. ALUMINUM FRAME WINDOWS, TYP.
5. ALUMINUM COPING
6. CAST STONE SURROUND
7. METAL CANOPY
8. ALUMINUM DOORS, TYP.
9. METAL LOUVERS
10. METAL RAIL
11. GLASS BLOCK WINDOW
12. CONCRETE STEPS
13. MASONRY CHIMNEY



## KEY NOTES:

1. MEMBRANE ROOFING
2. BRICK FACADE
3. CHAIN LINK FENCE
4. ALUMINUM FRAME WINDOWS, TYP.
5. ALUMINUM COPING
6. CAST STONE SURROUND
7. METAL CANOPY
8. ALUMINUM DOORS, TYP.
9. METAL LOUVERS
10. METAL RAIL
11. GLASS BLOCK WINDOW
12. CONCRETE STEPS
13. MASONRY CHIMNEY

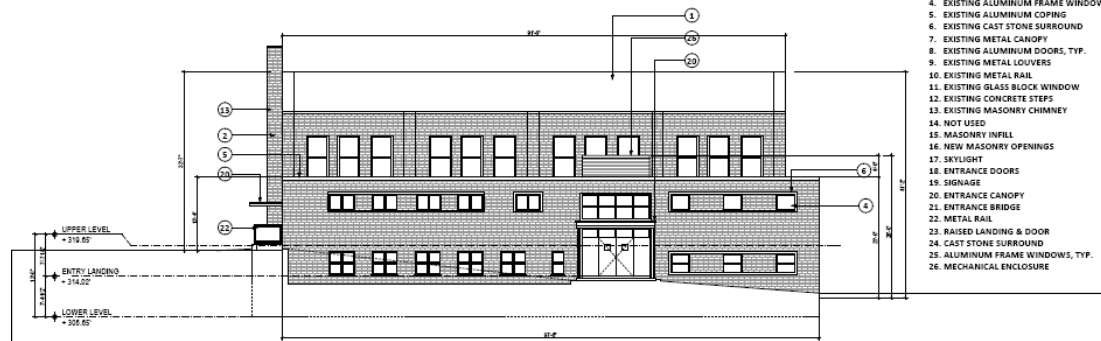




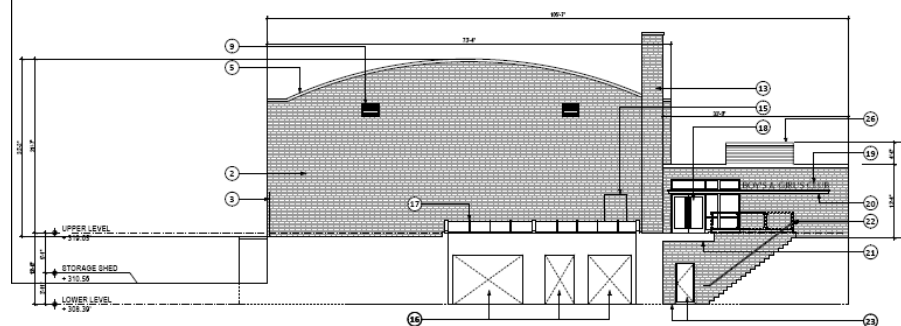
## Phase I Elevations

### KEY NOTES:

1. EXISTING MEMBRANE ROOFING
2. EXISTING BRICK FACADE
3. EXISTING CHAIN LINK FENCE
4. EXISTING ALUMINUM FRAME WINDOWS, TYP.
5. EXISTING ALUMINUM COPING
6. EXISTING CAST STONE SURROUND
7. EXISTING METAL CANOPY
8. EXISTING ALUMINUM DOORS, TYP.
9. EXISTING METAL LOUVERS
10. EXISTING METAL RAIL
11. EXISTING GLASS BLOCK WINDOW
12. EXISTING CONCRETE STEPS
13. EXISTING MASONRY CHIMNEY
14. NOT USED
15. MASONRY INFILL
16. NEW MASONRY OPENINGS
17. SKYLIGHT
18. ENTRANCE DOORS
19. SIGNAGE
20. ENTRANCE CANOPY
21. ENTRANCE BRIDGE
22. METAL RAIL
23. RAISED LANDING & DOOR
24. CAST STONE SURROUND
25. ALUMINUM FRAME WINDOWS, TYP.
26. MECHANICAL ENCLOSURE



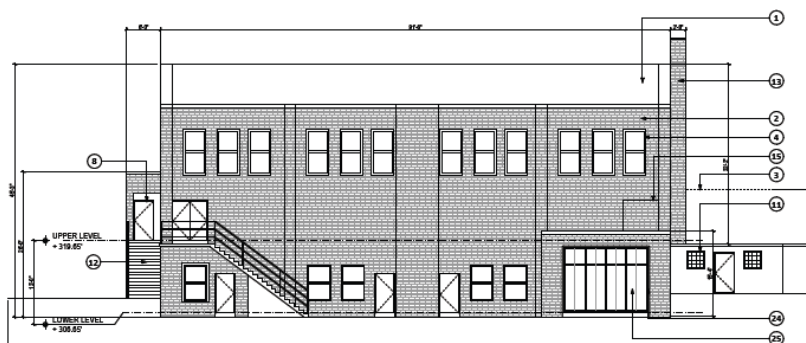
PHASE 1 NORTH ELEVATION  
1/16" = 1' - 0"



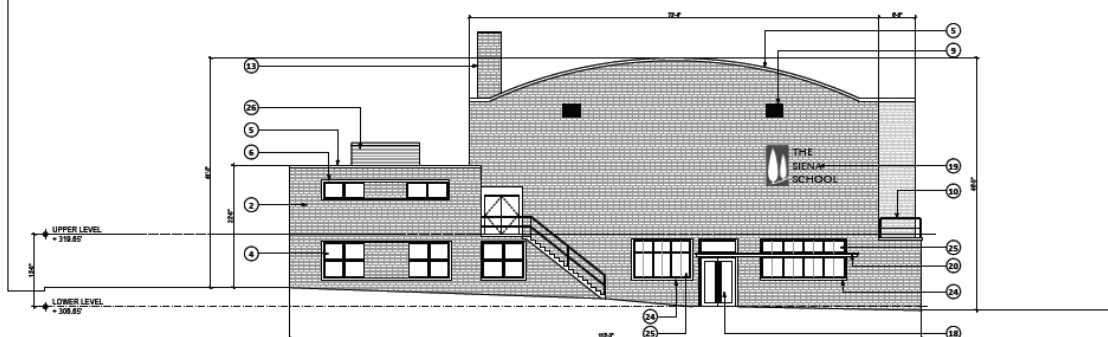
PHASE 1 EAST ELEVATION  
1/16" = 1' - 0"

### KEY NOTES:

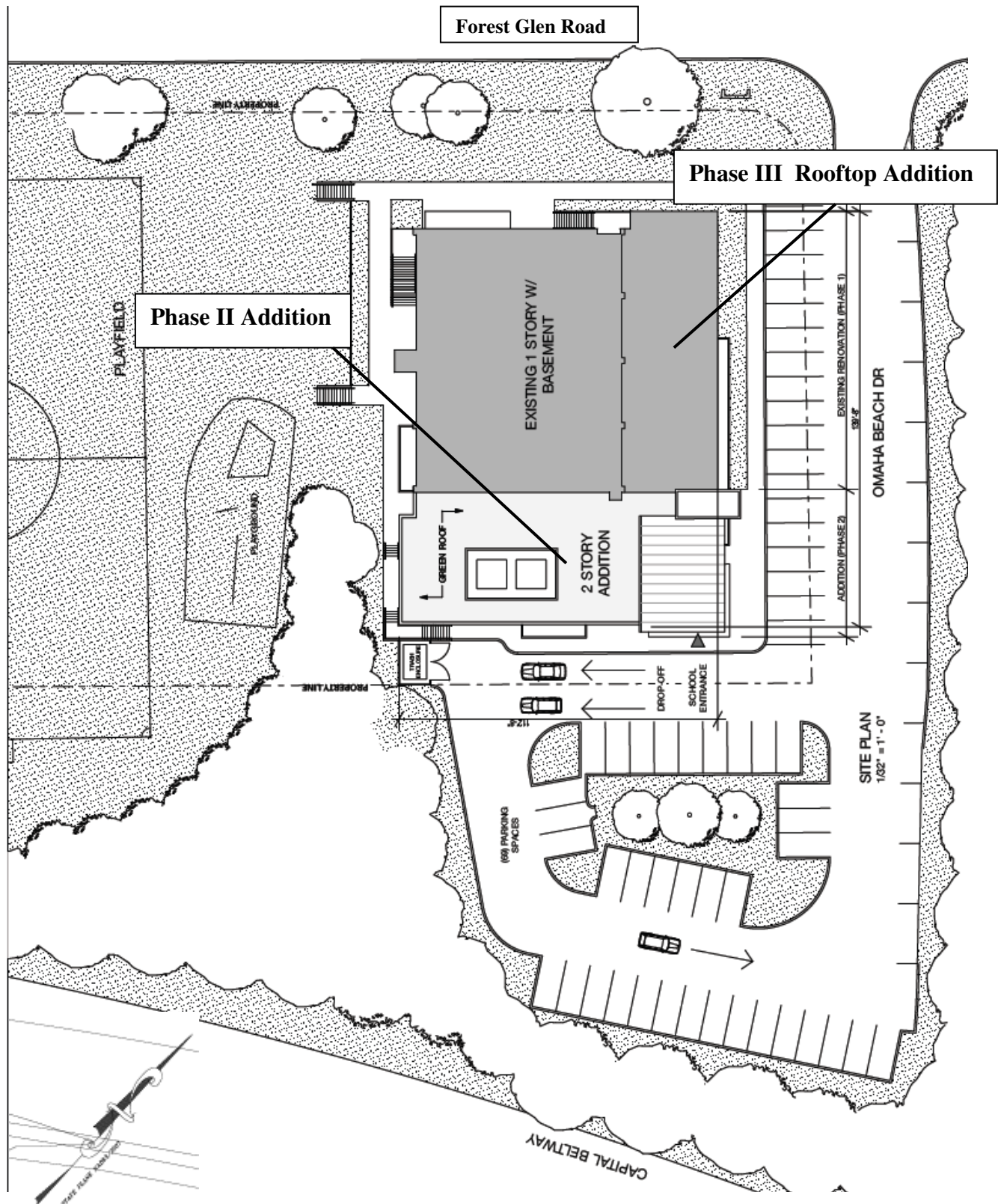
1. EXISTING MEMBRANE ROOFING
2. EXISTING BRICK FACADE
3. EXISTING CHAIN LINK FENCE
4. EXISTING ALUMINUM FRAME WINDOWS, TYP.
5. EXISTING ALUMINUM COPING
6. EXISTING CAST STONE SURROUND
7. EXISTING METAL CANOPY
8. EXISTING ALUMINUM DOORS, TYP.
9. EXISTING METAL LOUVERS
10. EXISTING METAL RAIL
11. EXISTING GLASS BLOCK WINDOW
12. EXISTING CONCRETE STEPS
13. EXISTING MASONRY CHIMNEY
14. NOT USED
15. MASONRY INFILL
16. NEW MASONRY OPENINGS
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18. ENTRANCE DOORS
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20. ENTRANCE CANOPY
21. ENTRANCE BRIDGE
22. METAL RAIL
23. RAISED LANDING & DOOR
24. CAST STONE SURROUND
25. ALUMINUM FRAME WINDOWS, TYP.
26. MECHANICAL ENCLOSURE



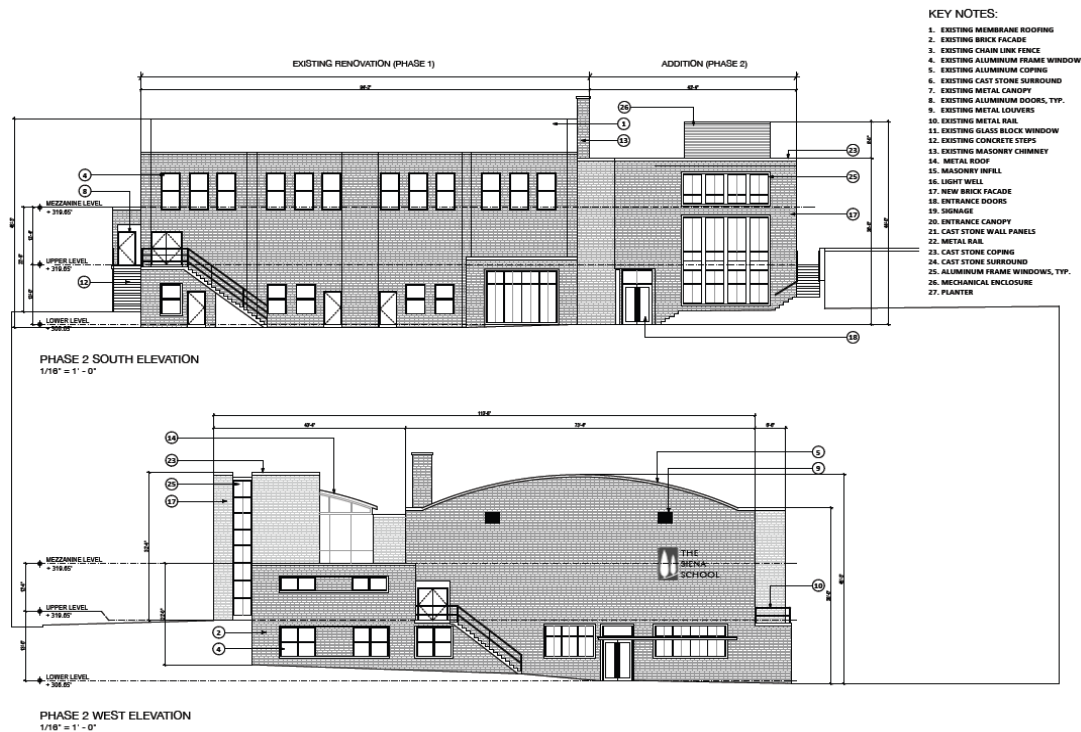
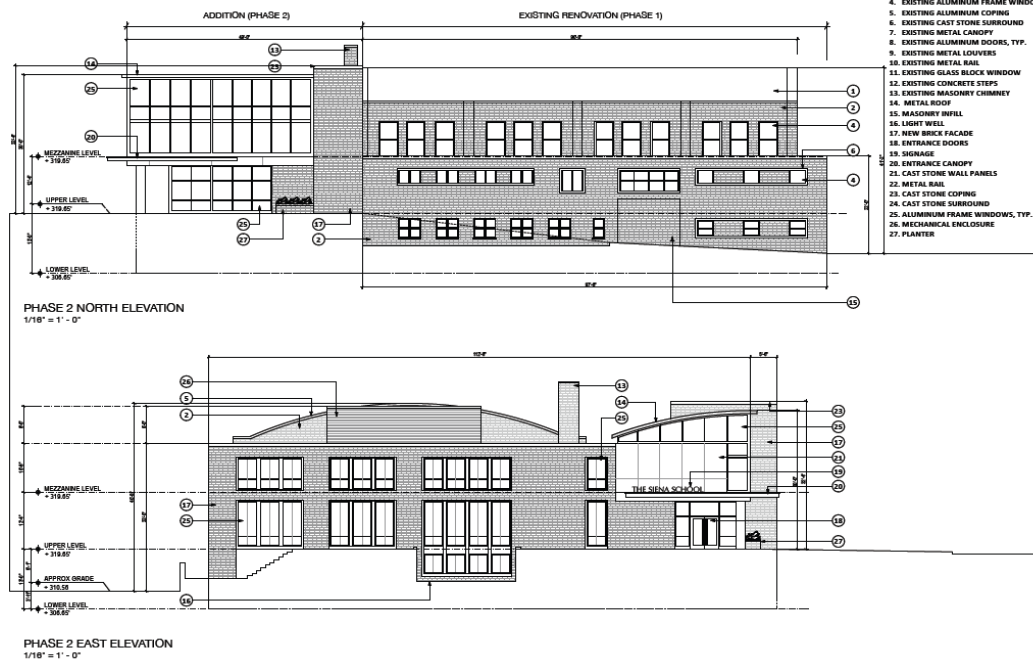
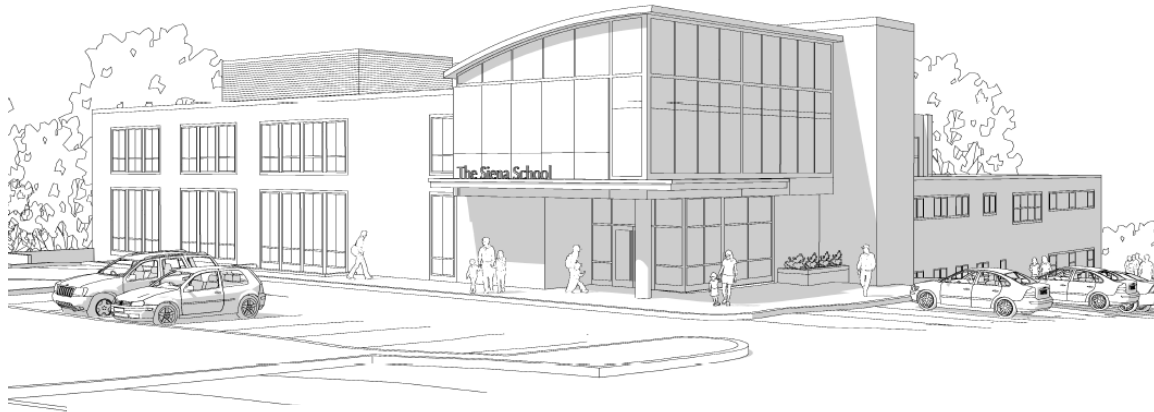
PHASE 1 SOUTH ELEVATION  
1/16" = 1' - 0"



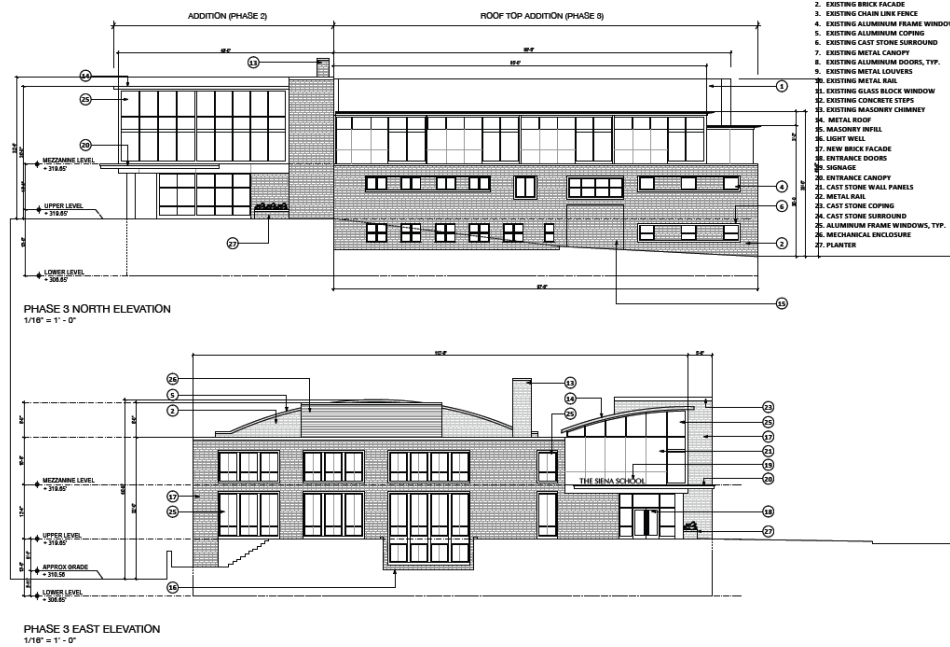
PHASE 1 WEST ELEVATION  
1/16" = 1' - 0"

**Phases II & III Architectural Site Plan**

## Phase II Perspective and Elevations

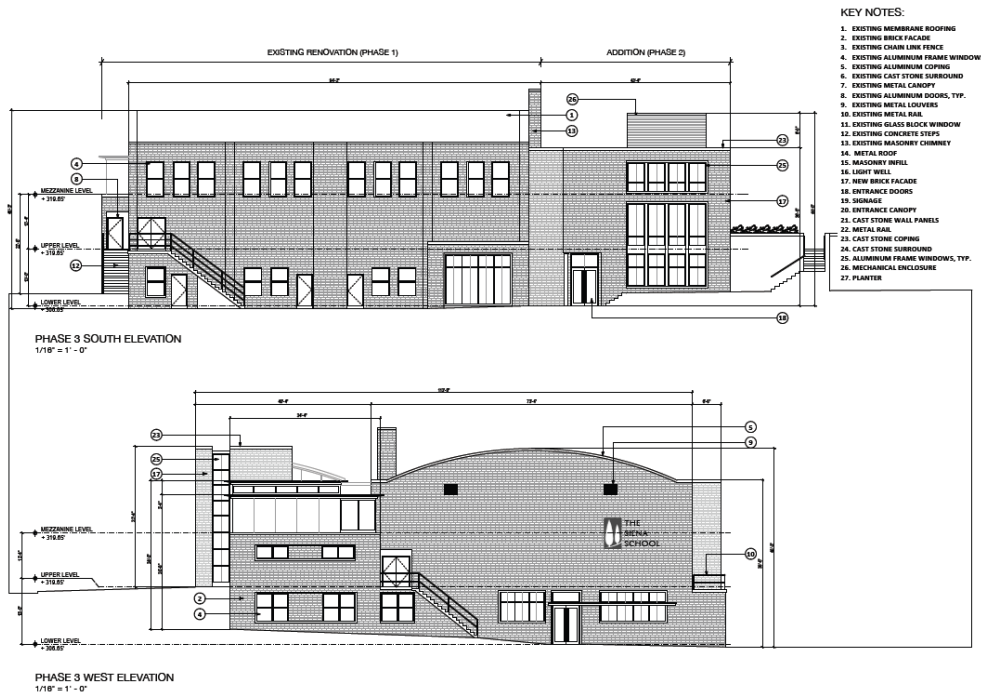


## Phase III Perspective and Elevations



## KEY NOTES:

1. EXISTING MEMBRANE ROOFING
2. EXISTING BRICK FACADE
3. EXISTING CHAIN LINK FENCE
4. EXISTING ALUMINUM FRAME WINDOW
5. EXISTING ALUMINUM COPING
6. EXISTING CAST STONE SURROUND
7. EXISTING METAL CANOPY
8. EXISTING ALUMINUM DOORS, TYP.
9. EXISTING METAL LOUVERS
10. EXISTING METAL RAIL
11. EXISTING GLASS BLOCK WINDOW
12. EXISTING CONCRETE STEPS
13. EXISTING MASONRY CHIMNEY
14. METAL ROOF
15. MASONRY INFILL
16. LIGHT WELL
17. NEW BRICK FACADE
18. ENTRANCE DOORS
19. SIGNAGE
20. ENTRANCE CANOPY
21. CAST STONE WALL PANELS
22. METAL RAIL
23. CAST STONE COPING
24. CAST STONE SURROUND
25. ALUMINUM FRAME WINDOWS, TYP.
26. MECHANICAL ENCLOSURE
27. PLANTER



## KEY NOTES:

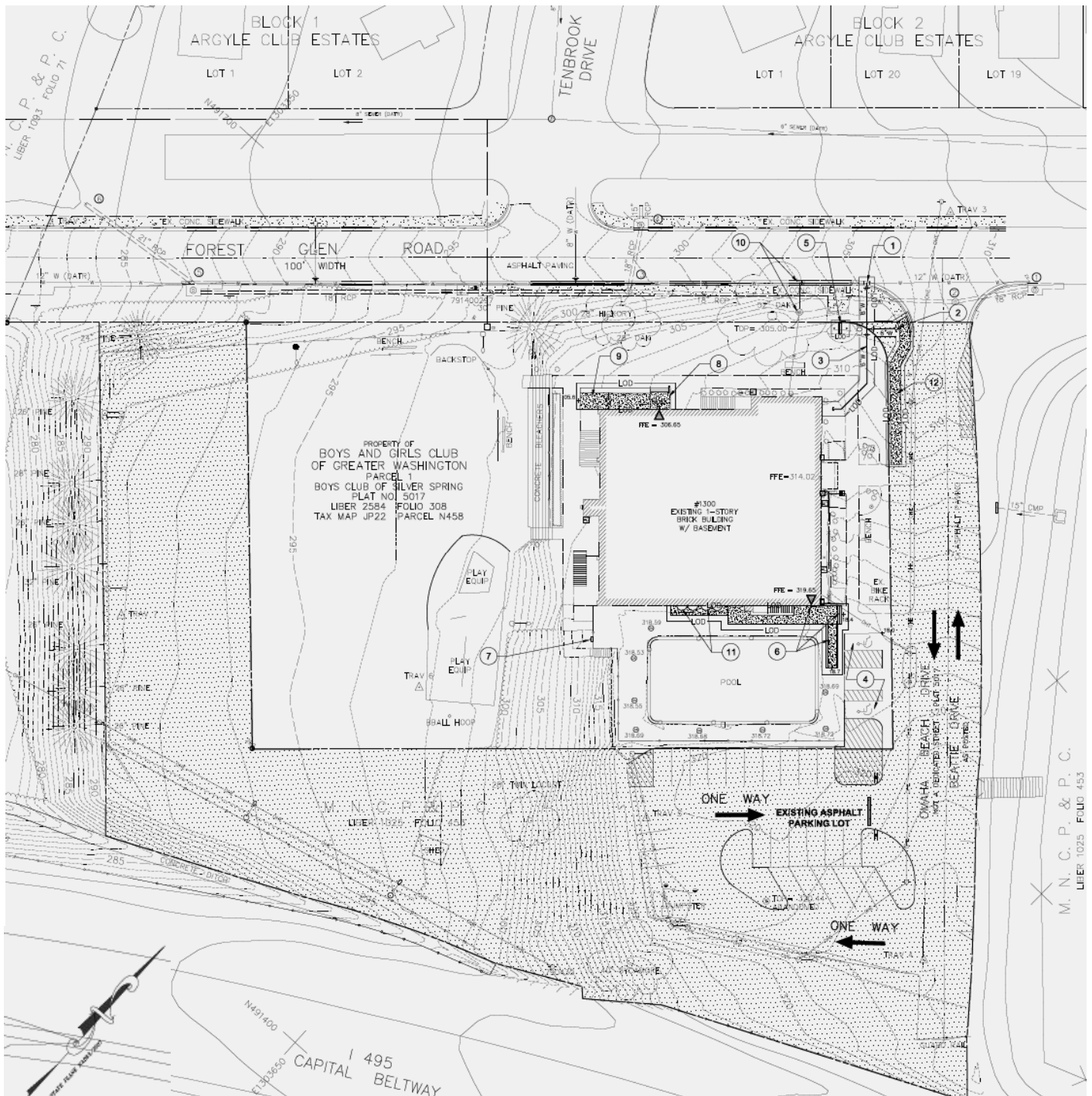
1. EXISTING MEMBRANE ROOFING
2. EXISTING BRICK FACADE
3. EXISTING CHAIN LINK FENCE
4. EXISTING ALUMINUM FRAME WINDOW
5. EXISTING ALUMINUM COPING
6. EXISTING CAST STONE SURROUND
7. EXISTING METAL CANOPY
8. EXISTING ALUMINUM DOORS, TYP.
9. EXISTING METAL LOUVERS
10. EXISTING METAL RAIL
11. EXISTING GLASS BLOCK WINDOW
12. EXISTING CONCRETE STEPS
13. EXISTING MASONRY CHIMNEY
14. METAL ROOF
15. MASONRY INFILL
16. LIGHT WELL
17. NEW BRICK FACADE
18. ENTRANCE DOORS
19. SIGNAGE
20. ENTRANCE CANOPY
21. CAST STONE WALL PANELS
22. METAL RAIL
23. CAST STONE COPING
24. CAST STONE SURROUND
25. ALUMINUM FRAME WINDOWS, TYP.
26. MECHANICAL ENCLOSURE
27. PLANTER




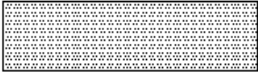
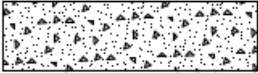
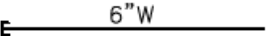
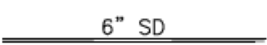
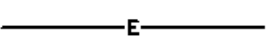

The special exception site plans are shown in the next section. Landscaping, lighting, signage, operations, parking and public facilities will be discussed in separate sections below.

## **2. Revised Site Plans:**

The revised Phase I Site Plan (Exhibit 33(c)) is reproduced below:



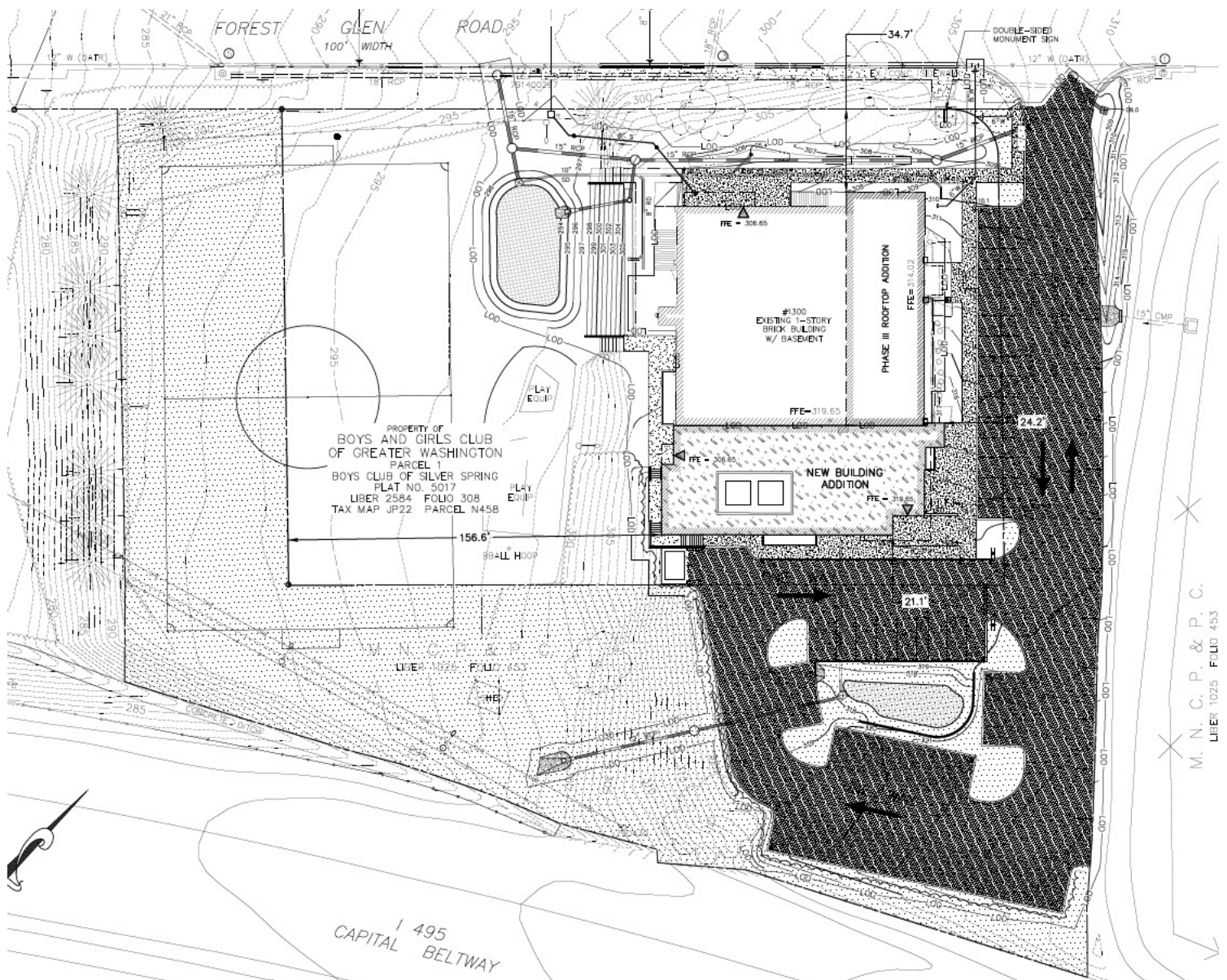
### SITE IMPROVEMENTS LEGEND

	PROPOSED LEASEHOLD AREA 64,080 S.F. (1.47 AC.)
	NEW ASPHALT PAVEMENT
	NEW CONCRETE SIDEWALK OR PLAZA
	NEW COMBINED SERVICE WATER LINE
	NEW STORM DRAIN
	NEW UNDERGROUND ELECTRIC SERVICE
	LIMIT OF DISTURBANCE DISTURBED AREA = 3,200 S.F.

### KEY NOTES

- ① NEW 12"x8" WATER SERVICE CONNECTION
- ② NEW FIRE HYDRANT
- ③ NEW 6" COMBINED SERVICE WATER LINE TO BUILDING
- ④ ADA COMPLIANT PARKING
- ⑤ PROPOSED MONUMENT SIGN DBL SIDED WITH FIXED LETTERING: 5'W X 4' H X 1' D, ON 1' H MASONRY BASE
- ⑥ NEW ENTRY TO UPPER LEVEL WITH ASSOCIATED PLAZA, RAMP AND STAIRS
- ⑦ NEW WALL-MOUNTED, LOW-WATTAGE LIGHTING TO ILLUMINATE EXISTING BOARDWALK
- ⑧ NEW ENTRY TO LOWER LEVEL AND STAIRS
- ⑨ NEW CONCRETE RAMP
- ⑩ ABANDON WATER SERVICE CONNECTION AND WATER METER IN ACCORDANCE WITH WSSC STANDARDS AND SPECIFICATIONS
- ⑪ NEW WINDOW WELLS
- ⑫ NEW LEAD-IN SIDEWALK FROM FOREST GLEN ROAD

The final Site Plan -SE-1 (Exhibit 43(a)), which shows both the Phase II and Phase III additions, is reproduced below:



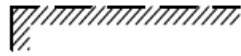
### PHASING NOTES

WITH THE EXCEPTION OF THE PHASE III ROOFTOP ADDITION, ALL IMPROVEMENTS SHOWN HEREON ARE CONSTRUCTED THROUGH PROJECT PHASE II.

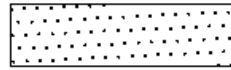
SEE SHEET SE-2 FOR PHASE I IMPROVEMENTS ASSOCIATED WITH INITIAL BUILDING RENOVATION.

**SITE IMPROVEMENTS LEGEND**

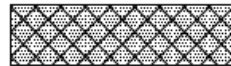
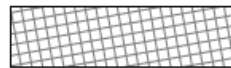
BUILDING ADDITION



PHASE III ROOFTOP ADDITION

PROPOSED LEASEHOLD AREA  
64,080 S.F. (1.47 AC.)

NEW ASPHALT PAVEMENT

NEW POROUS PAVERS WITH 12"  
THICK BASE AGGREGATENEW STORMWATER MANAGEMENT  
FACILITY (MICRO-BIORETENTION)NEW 4" THICK GREEN ROOF  
(75% COVERAGE OF NEW  
BUILDING ADDITION)

DEVELOPMENT STANDARDS		PERMITTED / REQUIRED	PROVIDED
MINIMUM LOT AREA			
	LOT	0.138 AC / 6,000 SF	1.375 AC / 59,909 SF
	LEASE AREA		1.471 AC / 64,080 SF
	TOTAL		2.846 AC / 123,989 SF
MINIMUM LOT WIDTH AT EXISTING STREET LINE			
	FOREST GLEN ROAD	25 FT	300 FT
MINIMUM LOT WIDTH AT BUILDING LINE		60 FT	300 FT
MINIMUM SETBACK FROM STREET			
	FOREST GLEN ROAD	25 FT	34.7 FT
MINIMUM SETBACK FROM ADJOINING LOT			
	ONE SIDE	8 FT	24.2 FT
	BOTH SIDES	18 FT	180.8 FT
	REAR	20 FT	21.1 FT
MAXIMUM BUILDING HEIGHT			
	WHEN MEASURED TO THE HIGHEST POINT OF ROOF SURFACE REGARDLESS OF ROOF TYPE	35 FT	35 FT <sup>1</sup>
MAXIMUM BUILDING COVERAGE			
	TOTAL EXISTING AND NEW BUILDINGS		15,356 SF
	PERCENT OF LOT AREA	35%	29%
OFF STREET PARKING			
	ONE SPACE FOR EACH EMPLOYEE, INCLUDING TEACHERS AND ADMINISTRATORS	45	46
	SUFFICIENT SPACES FOR THE SAFE AND CONVENIENT LOADING AND UNLOADING OF STUDENTS	8	8
	ADDITIONAL FACILITIES FOR STUDENT PARKING	8	8

<sup>1</sup> BUILDING HEIGHT WITH PHASE II AND PHASE III CONSTRUCTION.



Petitioner's civil engineer, Aaron Smith, testified that, to address concerns raised by Technical Staff, additional ADA access from the proposed ADA parking spaces to the building will be added under both Phase I and Phase II. Thus, Staff's recommended condition number 13 has been addressed by these plans. Tr. 112-113.

Petitioner's architect, F. Thompson Wheeler, testified that work in Phase I is going to be isolated largely to the interior of the building, with the exception of a new entrance to the north along Forest Glen Road, and a modification to the entrance on the southeast corner of the building, near the handicapped parking area. The primary entrance for the children entering and exiting the school will be on the southeast corner, near the pool. Petitioner will be creating a new entrance facing Forest Glen, mainly to serve children going down to the playing field. Currently, there are doors facing the playing field, but those are classroom doors. In Phases II and III, the doors will remain to get playing field access, but the main entrance of the school will remain at that southeast corner, on the parking lot side and away from Forest Glen.

Phase II will entail a new two-story addition, plus a cellar to the south side of the building. Mr. Wheeler stated that his approach to the addition of the building is to make it compatible with the existing architecture. The existing building is brick masonry with a precast trim around the window openings and the door openings. Petitioner will be treating the addition in the same way. Tr. 126-129.

The Phase III perspective rendering is identical to Phase II, with the exception that a second story addition will be added along the Omaha Beach Drive side of the building. That addition is going to be consistent with the Phase II addition, with a metal and glass storefront for the windows and precast concrete panels at the wall surfaces. Mr. Wheeler testified that those materials are compatible with the surrounding area. In the surrounding area, the houses are

predominantly brick, but this is an institutional building, so the glass and metal are compatible with the existing building and with nearby Holy Cross Hospital. Tr. 130-131.

In Mr. Wheeler's opinion, the building will be in harmony with the character, from a design perspective, of the surrounding neighborhood. He stated that one often sees institutional buildings in these residential contexts. While they are different, they can be made compatible through the use of materials, controlling height, and the like. Tr. 141-144.

The only real issue in this case is whether the building housing the special exception use will comply with the applicable development standards of the Zoning Ordinance with regard to height, once the modifications proposed by Petitioner are completed. That issue will be discussed in the next section of this report, followed by sections discussing landscaping, lighting, signage, operations, parking and public facilities.

### **3. The Height Issue:**

Zoning Ordinance §59-G-1.23 (a), *Development Standards*, provides:

*Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.*

In the subject case, the sole concern regarding development standards involves the height of the building. The R-60 Zone limits building height to 35 feet, with some leeway allowed for a building on a terrace. The existing building appears to exceed that limit, but Petitioner's evidence indicates that its proposed modifications to the building will result in compliance, if height is measured from Omaha Beach Drive (also known as Beattie Drive), rather than from Forest Glen Road.

Zoning Ordinance §59-A-2.1 defines height of a building as follows:

***Height of building:*** *The vertical distance measured from the level of approved street grade opposite the middle of the front of a building to the highest point of*

*roof surface of a flat roof or to the mean height level between eaves and ridge of a gable, hip, mansard, or gambrel roof. However, if a building is located on a terrace, the height above the street grade may be increased by the height of the terrace. In the case of a building set back from the street line 35 feet or more, the building height is measured from the average elevation of finished ground surface along the front of the building. On a corner lot exceeding 20,000 square feet in area, the height of the building may be measured from either adjoining curb grade. For a lot extending through from street to street, the height may be measured from either curb grade.*

The first problem is that the existing building, when measured from the public road it arguably fronts on, Forest Glen Road, far exceeds that limit. Technical Staff addressed this issue by suggesting that the terrace exception in the above statutory language reduced the applicable height measurement to 35 feet (Exhibit 17, p. 12); however, according to Petitioner's own architect, F. Thompson Wheeler, the building height came out to about 44.4 feet, when he measured along Forest Glen Road, even taking the terrace into account. Tr. 132. That figure didn't meet the zoning requirement at the time the building was erected, nor does it meet the present standard.

Research by Petitioner of documents relating to the transfer of the land from Park and Planning to the Boys and Girls Club<sup>7</sup> in 1954, revealed that Omaha Beach Drive (also known as Beattie Drive) was depicted as if it were a dedicated street. When Mr. Wheeler did an analysis of the building height along Omaha Beach Drive for the existing building, measuring at the midpoint of the elevation, he testified that the midpoint of the existing building is slightly under 35 feet, thus appearing to meet the height requirement. He concluded that was the likely scenario under which the existing building was permitted. Tr. 131-133. Subsequent to the hearing, however, Petitioner's counsel filed a candid reassessment of the architect's conclusion at the hearing that the existing building meets the 35-foot height standard when measured from Omaha

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<sup>7</sup> At that time, the Club was known as the "Boys' Club of Silver Spring, Inc."

Beach Drive. Instead, Petitioner now concedes that the existing building, even when measured from Omaha Beach Drive, is currently about three feet over that limit. Exhibit 43. Nevertheless, the Hearing Examiner does not feel that this difference is fatal to this application because Petitioner's special exception plans call for modification of the building, and it is therefore the modified state of the building which must meet the applicable development standards.

As to future development, both in Phase II and Phase III, the elevation will be longer along Omaha Beach Drive than it is currently, and this change, if height is measured from Omaha Beach Drive, will actually bring the building within the 35-foot height requirement that the Zoning Ordinance sets out. Exhibit 43. This result supports Mr. Wheeler's professional conclusion that the proposed additions to the building will result in a structure that meets the height requirements of the zoning ordinance if measured from Omaha Beach Drive. Tr. 133.

As mentioned above, in order to recommend approval, the Hearing Examiner must find that the special exception will be in compliance with the development standards of the applicable zone. There is no dispute that the applicable standard regarding height is 35 feet in the R-60 Zone. Since Petitioner concedes that the terrace provision will not suffice to meet that standard when measuring the building from Forest Glen Road, we turn now to the central question of whether it is permissible to measure the building's height from Omaha Beach Drive (also known as Beattie Drive) rather than from Forest Glen Road.

In response to this question, Petitioner's attorney, Jody Kline, provided a letter he had prepared and submitted to Department of Permitting Services (DPS), and it was countersigned by Mr. David Niblock, a DPS "Permitting Services Specialist." Exhibit 31. The letter provides the history that Mr. Wheeler testified to, and Mr. Niblock indicated in the closing certification, that in the future DPS will treat Beattie Drive or Omaha Beach Drive, whichever it is called, as "a dedicated public street" for purposes of calculating the height of this building on this property,



although it has never actually been dedicated as a public roadway. Mr. Kline also noted that though the building is addressed on Forest Glen Road, the functioning front of the building has always been Beattie Drive. A corner lot has two fronts, and the Department of Permitting Services is going to treat it as a corner lot because of the history of Omaha Beach Drive. If this site is treated as a corner lot, the average grade as measured to the mid-point of the roof meets the 35-foot height requirement on the Omaha Drive side. Tr. 134-138. Mr. Wheeler adopted Mr. Kline's statement as part of his testimony. Tr. 138.

§59-A-2.1's definition of height of a building, quoted above, calls for that measurement to be done from "*the front of a building.*" Zoning Ordinance §59-A-2.1 defines "frontage" as "*The length of the front property line of the lot, lots or tract of land abutting a public street, road or highway, or rural right-of-way.*" The definition of "street" in the same Code section is, "*A public or dedicated way 30 feet or more in width or a public proposed right-of-way, widening or extension of an existing street or public way shown on any plan approved by the commission.*" "Street frontage" is defined as, "*Any part of a lot which abuts a public street, road, highway, rural right-of-way.*"

Mr. Kline correctly points out, in his February 14, 2012 letter to the Hearing Examiner (Exhibit 42), that although not "dedicated," Omaha Beach Drive is shown as public parkland owned by M-NCPPC on a 1957 Plat, a copy of which is attached to the letter endorsed by Mr. Niblock (Exhibit 31). Moreover, the definition of "Street" does not say that it must be dedicated; rather it refers to a "public or dedicated way 30 feet or more in width or a public proposed right-of-way, . . . shown on any plan approved by the commission." [Emphasis added.]

This array of definitions leaves some question in the Hearing Examiner's mind as to whether the height of the finished building can be properly measured from Omaha Beach [*i.e.*, Beattie] Drive, instead of Forest Glen Road. The issue in this case, whether the proposed building

will meet height standards, is different from the issue of whether a proposed building will meet setback standards because the latter merely requires a simple measurement from a proposed building line to the street, while the former requires a technical interpretation of language in the Code specifying the location from which the measurement should be taken.

It is a maxim of statutory construction that an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight. As stated in *Watkins v. Secretary, Dept. of Public Safety and Correctional Services*, 377 Md. 34, 46, 831 A.2d 1079, 1086 (2003), "We must respect the expertise of the agency and accord deference to its interpretation of a statute that it administers." Section 2-42B (a)(2)(A) of the Montgomery County Code specifies that the Department of Permitting Services is responsible for "administering, interpreting, and enforcing the zoning law and other land use laws and regulations . . ." Thus, DPS's interpretation of the Zoning Ordinance regarding this issue must be given due deference.

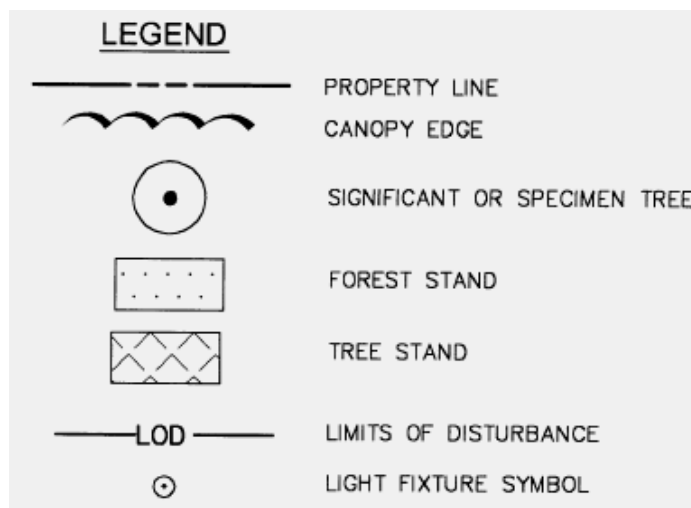
Were DPS (or at least Mr. Niblock) clearly in error in interpreting the Zoning Ordinance, the Hearing Examiner would not feel compelled to follow a patently erroneous interpretation of the law, since our goal must always be to give effect to the intent of the Council, the legislative body which enacted the Zoning Ordinance. *Trembow v. Schonfeld*, 393 Md. 327, 336-337, 901 A.2d 825, 831 (2006). However, in the subject case, the Zoning Ordinance is somewhat ambiguous on the point, and the only evidence in the record (the history of sale of the land; the 1957 Plat; the existence of Omaha Beach Drive; the fact that the original building was permitted; the approval of the Boys' Club special exception in the existing building; Mr. Niblock's certification; the testimony of Petitioner's architect; and the related documents) supports Petitioner's interpretation, which would allow the height measurement to be taken from Omaha Beach [*i.e.*, Beattie] Drive, instead of Forest Glen Road.

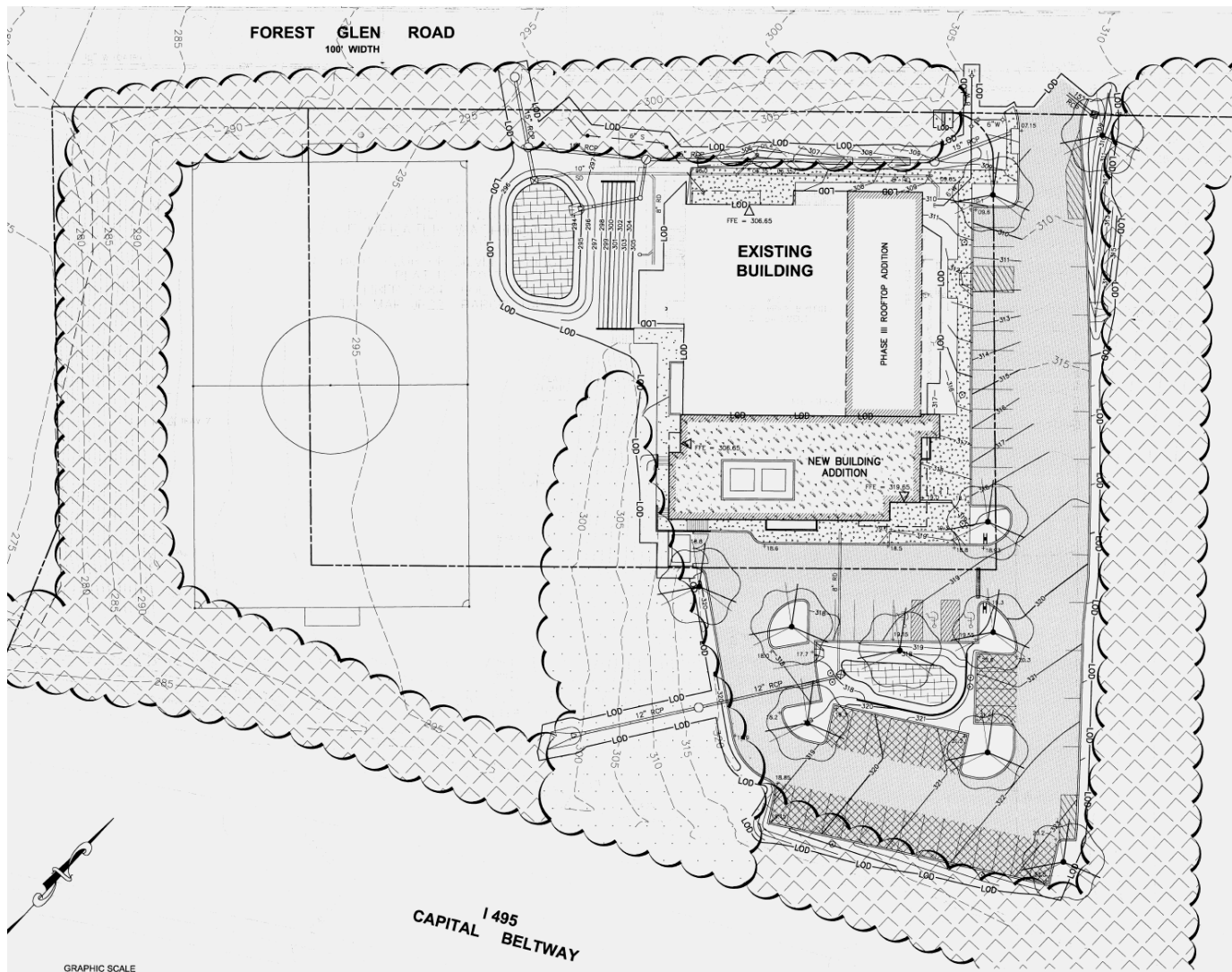
Although not totally convinced on the point, Zoning Ordinance §59-G-1.21(a) instructs us to apply a preponderance of the evidence standard, and based on this record, the Hearing Examiner finds that the building, as Petitioner proposes to modify it to complete this special exception, will be consistent with the Zoning Ordinance's development standards, as they are interpreted by the agency charged with enforcing them.

On the other hand, the Hearing Examiner feels compelled to recommend a condition that would note that future construction is subject to review by DPS officials as to compliance with the applicable development standards. In other words, approval of the special exception in this case should be taken as an interim, not final, determination by the Board of Appeals that the planned construction in Phases II and III will meet all development standards applicable at that time. Petitioner must file with the Board of Appeals a valid permit (or permits) issued by DPS for any future construction on the site, and ultimately Petitioner's construction must bring the building within the applicable development standards.

#### **4. Landscaping and Lighting:**

Landscaping on the site is shown on the revised Landscape and Lighting Plan (Exhibit 33(d)):





### PLANT\_SCHEDULE

#### TREES

#### QTY

#### BOTANICAL NAME / COMMON NAME

#### CONT

#### CAL



10

QUERCUS RUBRA / RED OAK

B &amp; B

2" CAL

#### GROUND COVERS

#### BOTANICAL NAME / COMMON NAME



BIORETENTION PLANTING MIX

#### SHADE TREE REQUIREMENT


IMPERVIOUS AREA = 26,351 SF  
 30% SHADE COVERAGE REQUIRED = 7,905 SF  
 10 TREES @ 962 SF PROVIDED = 9,620 SF

\*SHADE TREES HAVE BEEN PLANTED IN ACCORDANCE WITH THE MONTGOMERY COUNTY CODE ZONING ORDINANCE CHAPTER 59-E-2.83 USING THE MONTGOMERY COUNTY TECHNICAL TREES MANUAL CANOPY COVERAGE AT 20 YEARS\*

The revised landscape plan depicts shade trees which have been added to satisfy Technical Staff's recommended condition number 15, providing additional canopy coverage over the parking lot, in accordance with Zoning Ordinance §59-E-2.83(d). That condition is therefore no longer needed. Other than the addition of shade trees for the parking area, Technical Staff found that, the proposed construction "appears to be well related to the surrounding area in its siting, landscaping, and appearance . . ." Exhibit 17, p. 15.

The Hearing Examiner agrees with Technical Staff. As is evident from the aerial photograph reproduced on page 5 of this report and from the Landscape Plan reproduced above, the subject site is surrounded on all sides by extensive tree stands, which buffer the use from its surroundings.

Cut sheets for the proposed lighting are provided on page 2 of the Landscape and Lighting Plan (Exhibit 33(d)(ii)):



**KIM LIGHTING**  
P.O. BOX 60080  
CITY OF INDUSTRY, CA 91745-1788  
1-626-968-5666  
www.kimlighting.com

**1 Mounting:**

Rough Mount 4" O.D. Poles only	Temp Mount For Poles with 2" Pipe size Tension	Fast Mount 4" x 5" O.D. Poles only	Wall Mount
15	15	268	198
425	425	425	425

**2 Fixture:**

Horizontal Lamp

Type II	Type III	Type IV	Type V
SRS1H2	SRS1H3	SRS1H4	SRS1H5

Vertical Lamp

Asymmetrical	Symmetrical
SRS1V3	SRS1V5

**3 Electrical Module:**

HPS = High Pressure Sodium  
MH = Metal Halide  
PMH = Pulse Start Metal Halide

70HPH120	100HPH120	150HPH120	175MH120	200PMH120
70HPH200	100HPH200	150HPH200	175MH200	200PMH200
70HPH300	100HPH300	150HPH300	175MH300	200PMH300
70HPH400	100HPH400	150HPH400	175MH400	200PMH400
70PMH120	100PMH120	150PMH120	175PMH120	200PMH120
70PMH200	100PMH200	150PMH200	175PMH200	200PMH200
70PMH300	100PMH300	150PMH300	175PMH300	200PMH300
70PMH400	100PMH400	150PMH400	175PMH400	200PMH400

**4 Finish:**

Clear	Black	Dark Bronze	Light Grey	Platinum Silver	White	Custom Colors
CC-P	BL-P	DB-P	LG-P	PS-P	WH-P	CC-P

**5 Optional Photocell:**

Line Volts	120V	208V	240V	277V	347V	480V
Cat. No.	A-30	A-31	A-32	A-33	A-35	A-34

**6 Optional Polycarbonate Lens:**

Polycarbonate Lens	CP	Clear Polycarbonate Lens replaces standard reflector
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**7 Optional Houseside Shield:**

Houseside Shield	HS	Available for Type II, III, IV, and Asymmetrical reflectors only
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**8 Optional Fusing:**

Line Volts	120V	208V	240V	277V	347V	480V
Cat. No.	SF	DF	DF	SF	SF	DF

**9 Optional Decorative Base Cover:**

Decorative Base Cover for 4" Poles	DBCA	Decorative Base Cover for 5" Poles
Decorative Base Cover for 5" Poles	DBCS	Replaces standard base cover

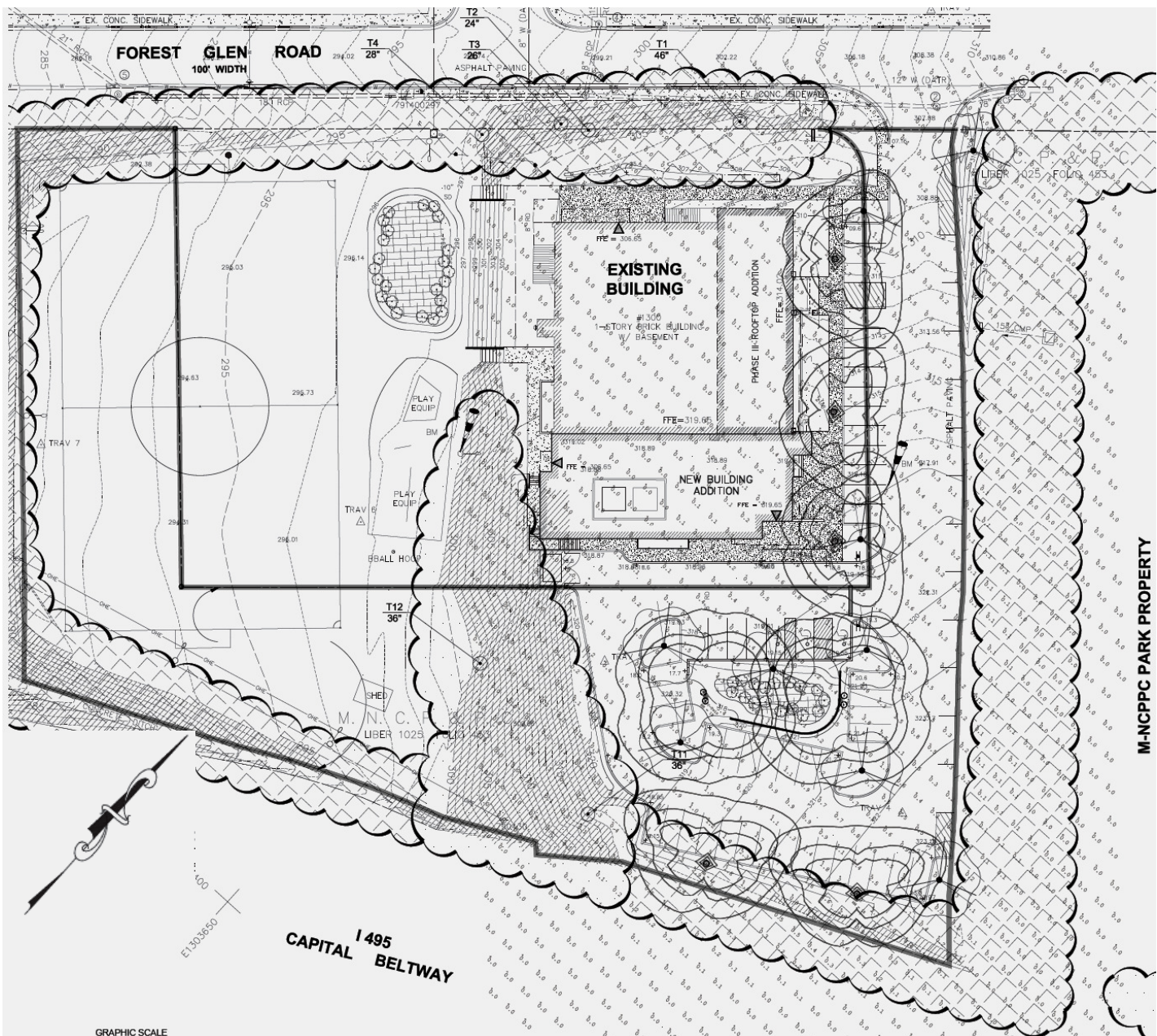
**4 SITE LIGHTING FIXTURES ON 16' POLE**  
NOT TO SCALE

**5 LIGHTING FIXTURE OPTIONS**  
NOT TO SCALE

NOTES:  
1. INSTALLATION TO BE COMPLETED IN ACCORDANCE WITH MANUFACTURER'S SPECIFICATIONS.



Technical Staff recommended condition numbered 7, which called for additional low-level lighting along the southern walkway leading to the playing fields. Petitioner's architect, F. Thompson Wheeler, noted that to satisfy that condition, Petitioner is proposing to install a building mounted light at the southeast corner of the building that will shine down and illuminate the stairs at that location in Phase I. In Phase II, the pool will come out, the stairs will come out, and there will be other lighting that will address that. Tr. 139-141. The photometric plan submitted by Petitioner (Exhibit 5(a)) depicts the final lighting proposal, as shown below:



Luminaire Schedule						
Symbol	Qty	Label	Arrangement	Total Lamp Lumens	LLF	Description
⊙	5	A	SINGLE	11870	0.800	KIM Lighting - SRS1H3/150MH-
⊙ ⊙	2	A-V-Twin	GROUP	N.A.	0.800	KIM Lighting - 2SB/SRS1H5/150PMH/PSP-A-33

Calculation Summary							
Label	CalcType	Units	Avg	Max	Min	Avg/Min	Max/Min
Siena School Site Lighting	Illuminance	Fc	0.37	5.5	0.0	N.A.	N.A.
Parking Lot	Illuminance	Fc	1.22	5.5	0.1	12.20	55.00

Technical Staff's only comment about lighting, other than their recommended condition numbered 7, discussed above, was as follows (Exhibit 17, p. 15):

The applicant is proposing a residential-type light, mounted on a 16-foot high pole with a full cutoff. The lighting levels along the side and rear lot lines exceed 0.1 foot-candles. Staff notes, however, that the rear and side areas of the special exception abut I-495 and parkland, respectively, and the lighting level will not substantially intrude onto residential properties.

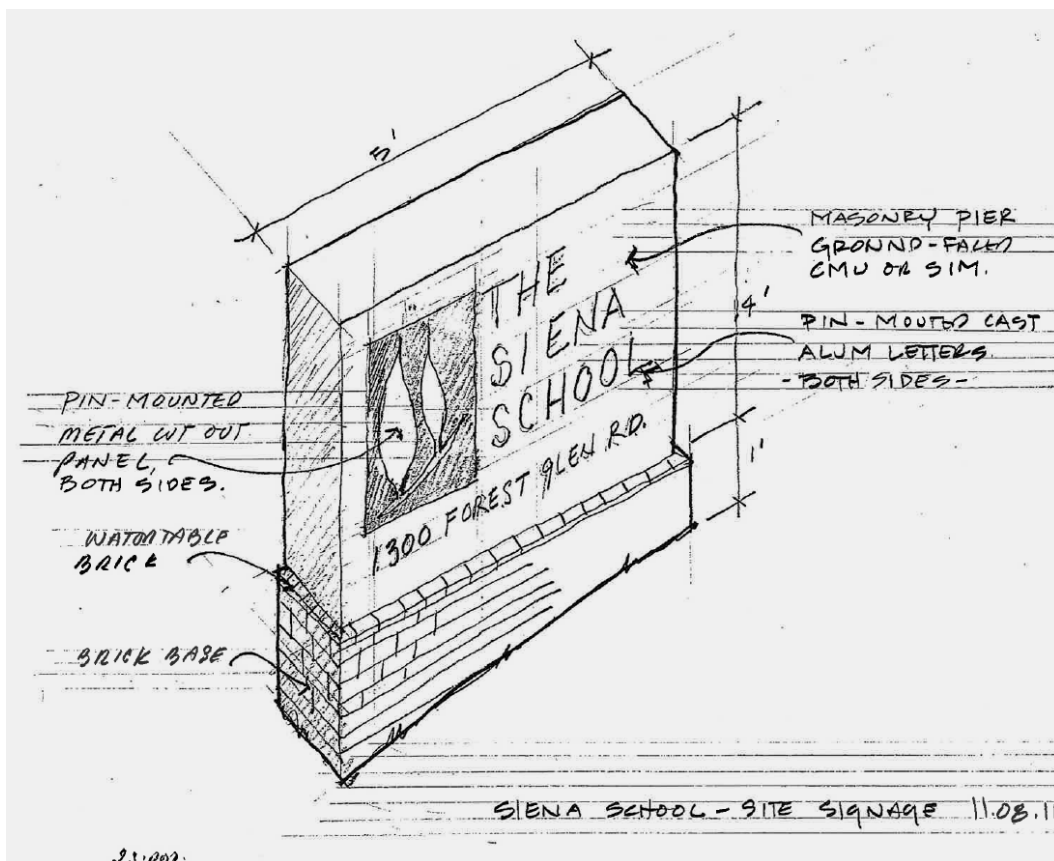
As noted by Technical Staff, the photometric study clearly indicates that the proposed lighting will exceed the level of 0.1 footcandles at the side and rear lot lines permitted by Zoning Ordinance §59-G-1.23(h). However, that section also provides that “. . . lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety.” In this case, the institutional use must provide sufficient lighting to ensure safety. Moreover, the use is surrounded by tree stands on all sides and is surrounded by parkland and the Beltway on three sides. To the north, where there is residential development, the photometric study indicates that the 0.1 footcandle standard will not be exceeded. Given Staff's finding that “the lighting level will not substantially intrude onto residential properties,” and the need for institutional safety, the Hearing Examiner finds that the Board should permit the exceedances evident on the southern and eastern property lines of the site, where they will have no ill effect.

## **5. Signage:**

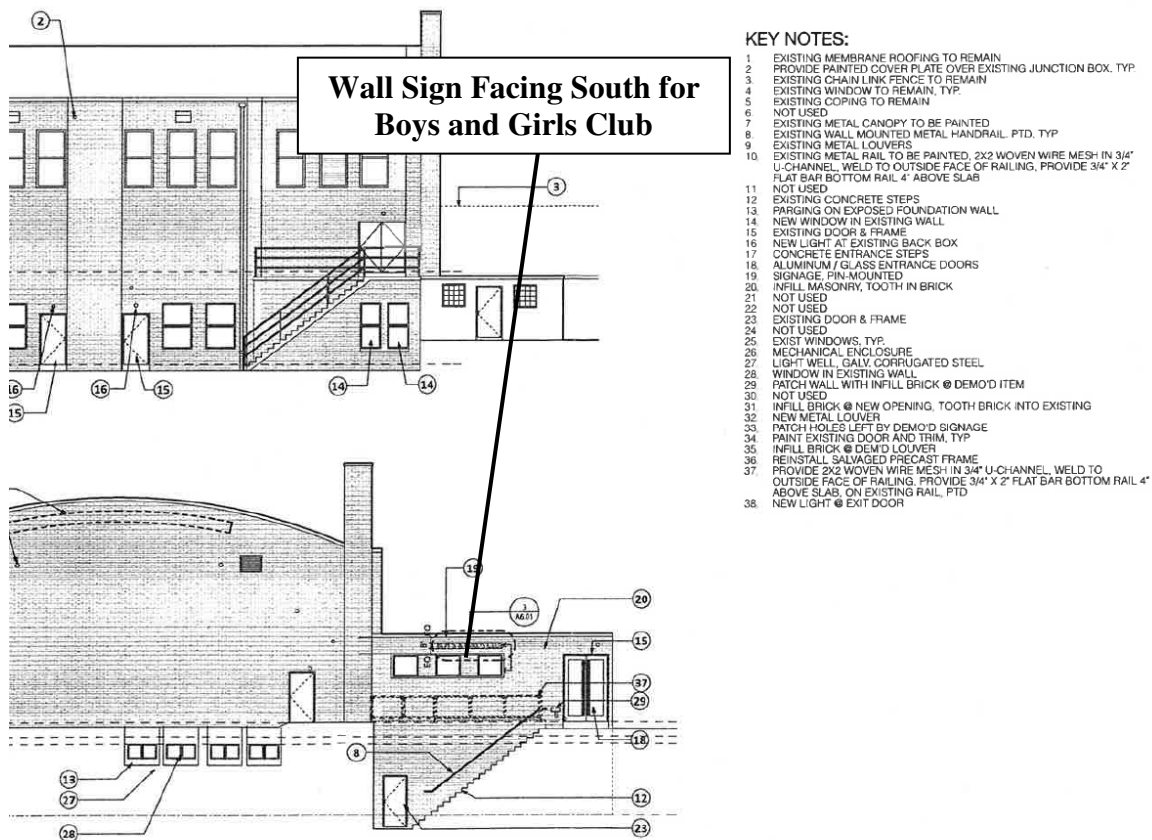
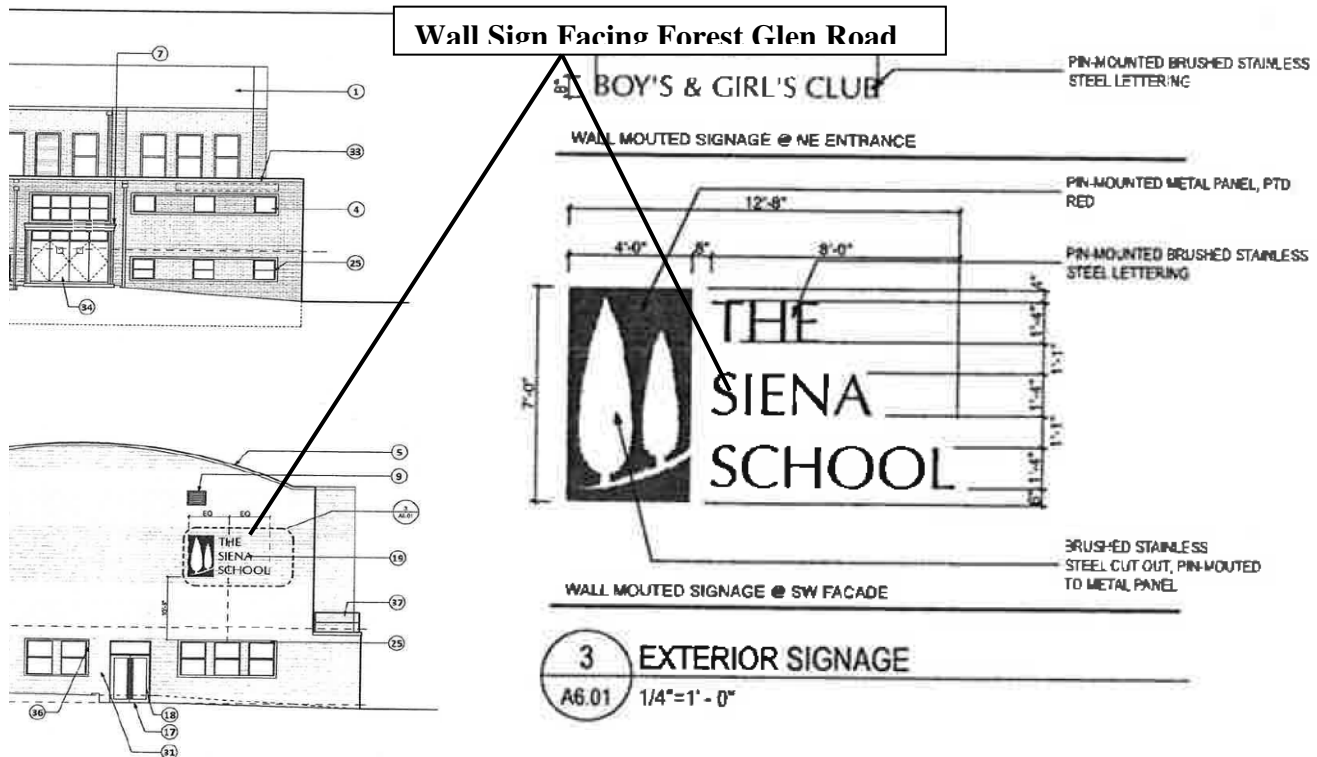
Petitioner seeks permission to erect three signs. They are described in a letter dated February 21, 2012, from Petitioner's counsel, as follows (Exhibit 44):

1. A ground mounted monument sign located at the entrance driveway to the subject property and designated on the special exception site plan (Sheet SE-1) as "Double-Monument Sign." . . . The dimensions of the sign will be 5 feet wide and a maximum of five to six feet high, depending on the grade level of the lowest point of the sign. The sign will be a masonry pier sitting on top of a brick base. The "message" on both sides of the sign will include (a) the school logo, (b) pin mounted cast metal letters reading "The Siena School" and (c) the address for the school (also in pin mounted cast metal letters).
2. A wall mounted sign placed on the facade of the gymnasium building facing Forest Glen Road. . . The dimensions of the sign are 12' 8" (wide) x 7' (high). The "message" will be the name and the logo of the School in pin mounted brushed stainless steel lettering.
3. A wall mounted sign on the facade of the building facing south (towards the Beltway) indicating the entrance for the Boys & Girls Club activities. The message of the sign . . . will read "Boys & Girls Club" and will measure 9' 4" (wide ) x 8" (high). The letters will be brushed stainless steel mounted on the brick facade.

These proposed signs are depicted in a sketch and plans submitted with Petitioner's letter of February 21, 2012. The proposed monument sign (Exhibit 44(a)) is shown below:



Portions of Plans A6.01 (Exhibit 44(b)(i)) and A6.02 (Exhibit 44(b)(ii)) are reproduced below, showing the proposed wall signs:



## KEY NOTES:

- 1 EXISTING MEMBRANE ROOFING TO REMAIN
- 2 PROVIDE PAINTED COVER PLATE OVER EXISTING JUNCTION BOX. TYP
- 3 EXISTING CHAIN LINK FENCE TO REMAIN
- 4 EXISTING WINDOW TO REMAIN, TYP
- 5 EXISTING COPING TO REMAIN
- 6 NOT USED
- 7 EXISTING METAL CANOPY TO BE PAINTED
- 8 EXISTING WALL MOUNTED METAL HANDRAIL, PTD, TYP
- 9 EXISTING METAL LOUVERS
- 10 EXISTING METAL RAIL TO BE PAINTED, 2X2 WOVEN WIRE MESH IN 3/4" U-CCHANNEL, WELD TO OUTSIDE FACE OF RAILING, PROVIDE 3/4" X 2" FLAT BAR BOTTOM RAIL, 4" ABOVE SLAB
- 11 NOT USED
- 12 EXISTING CONCRETE STEPS
- 13 PARING ON EXPOSED FOUNDATION WALL
- 14 NEW WINDOW IN EXISTING WALL
- 15 EXISTING DOOR & FRAME
- 16 NEW LIGHT AT EXISTING BACK BOX
- 17 CONCRETE ENTRANCE STEPS
- 18 ALUMINUM / GLASS ENTRANCE DOORS
- 19 SIGNAGE, PIN-MOUNTED
- 20 INFILL MASONRY, TOOTH IN BRICK
- 21 NOT USED
- 22 NOT USED
- 23 EXISTING DOOR & FRAME
- 24 NOT USED
- 25 EXIST WINDOWS, TYP
- 26 MECHANICAL ENCLOSURE
- 27 LIGHT WELL, GALV. CORRUGATED STEEL
- 28 WINDOW IN EXISTING WALL
- 29 PATCH WALL WITH INFILL BRICK @ DEMO'D ITEM
- 30 NOT USED
- 31 INFILL BRICK @ NEW OPENING, TOOTH BRICK INTO EXISTING
- 32 NEW METAL LOUVER
- 33 PATCH HOLES LEFT BY DEMO'D SIGNAGE
- 34 PAINT EXISTING DOOR AND TRIM, TYP
- 35 INFILL BRICK @ DEMO'D LOUVER
- 36 REINSTALL SALVAGED PRECAST FRAME
- 37 PROVIDE 2X2 WOVEN WIRE MESH IN 3/4" U-CCHANNEL, WELD TO OUTSIDE FACE OF RAILING, PROVIDE 3/4" X 2" FLAT BAR BOTTOM RAIL, 4" ABOVE SLAB, ON EXISTING RAIL, PTD
- 38 NEW LIGHT @ EXIT DOOR

Technical Staff indicates the following with regard to signage (Exhibit 17, p. 15):

The architectural renderings show the inclusion of wall-mounted and monument signs, located at the entrances to the site . . . . The proposed signage is typical of this type of institutional use. Prior to obtaining building permits for the installation for signs, the applicant will need to provide the submitted concept signage plan to the “Sign Review Board.”

Although Petitioner concedes that sign variances may be needed for all these signs (Exhibit 44, p. 2), the Hearing Examiner notes that one or more of the signs may qualify as signs allowed in a “Place of assembly,” under specific provisions in the Zoning Ordinance governing signs in residential zones. A “Place of assembly” is defined in Zoning Ordinance §59-F-2 as, “Any place of worship, school, library, museum, or hospital. . . .” The proposed school clearly meets this definition. The characteristics of entrance signs for places of assembly in residentially zoned areas are controlled by Zoning Ordinance §59-F-4.2(a)(3)(B), which provides:

*(B) Place of Assembly Location Sign. Additional sign area is permitted for a permanent location sign for any place of assembly. The sign must be a ground sign or a wall sign located at an entrance to the building or driveway to identify the location of the building for a user of the facility.*

- 1. Number. Two signs are allowed at each entrance.*
- 2. Area. The sign area must not exceed 40 square feet.*
- 3. Placement.*

*(i) Location. The sign must be set back at least 5 feet from the property line, or, if the driveway entrance to the subdivision is located in the right-of-way, a revocable permit issued jointly by the Sign Review Board and the appropriate transportation jurisdiction in accordance with Section 59-F-7.1(g) must be obtained to erect the sign.*

*(ii) Height. The sign must not exceed 26 feet in height.*

*4. Illumination. The sign may be illuminated in accordance with the requirements of Section 59-F-4.1(e).*

Given the wording of the statute and Technical Staff’s finding that the signage is typical for this type of use, the Hearing Examiner finds that Petitioner’s sign proposal is appropriate. All signs placed on the property must meet the requirements of Section 59-F-4.2(a)(3)(B) in terms of number, location, size and illumination, unless a sign variance is obtained. Moreover, Petitioner



must obtain a sign permit from the Department of Permitting Services and file a copy with the Board of Appeals. The following condition is recommended in Part V of this report:

A sign permit must be obtained for the proposed monument and wall signs (Exhibits 44(a) and (b)), and a copy of the permit for the approved signs must be submitted to the Board of Appeals before the signs are posted. If required by the Department of Permitting Services, Petitioner must obtain a sign variance for the proposed signs or amend the design of the proposed signs to have them conform with all applicable regulations. If the design is amended, a diagram showing the amended design must be filed with the Board.

## **6. Operations—Phasing, Enrollment, Staffing, Hours, Coordination and Special Events:**

### **a. Siena School's Programs:**

The Siena School is devoted to “educating bright college bound students with mild to moderate language-based learning differences.” Tr. 34-36. The School includes grades four through twelve (*i.e.*, elementary, middle and high school), and bases its curriculum on national Core Curriculum standards, with adaptations as necessary for its students. There are also summer programs and after-school activities, described in more detail below. Second Amended Statement of Operations, Exhibit 40(a), pp. 13-15.

### **b. Operations During Phased Development:**

Planned operations for the subject site are complicated by the fact that the building will be shared with the existing Boys and Girls Club for a number of years, and that usage by the Siena School will increase as enrollment and staffing grow and additions are added to the building in Phases II and III.

The Head of the Siena School, Clay Kaufman, stated it is unlikely that Phase II would occur sooner than three or four years, and it would probably be another few years after that to begin Phase III. Tr. 57-58. Technical Staff provided a Table depicting how operations are expected to grow at each phase of development (Exhibit 17, p. 4):



Phase	Physical Improvement	Operational Aspect (Siena School)
I	Renovate existing $\pm 20,000$ SF of existing building	90 students (maximum) 5 staff (4 FT, 1 PT) 15 faculty (12 FT, 3 PT) Summer Program: 80 students/week (Boys and Girls Club) and 30 students/week (Siena School)
II	Remove pool and construct $\pm 20,000$ SF, two-story addition	140 students (maximum) 30 staff Summer Program: 140 students and 30 staff
III	Construct a 2 <sup>nd</sup> floor (approx. 3,300 SF) near the eastern edge of the existing building	225 students (maximum) 15 staff 40 faculty Summer Program: 225 students and 55 staff

**c. Enrollment and Staffing:**

It should be noted that while the above table predicts the likely numbers of students and staff at each phase, Petitioner has asked that these not be made into hard caps because its traffic study, which will be discussed in Part II.D.8. of this report, indicates that even under the worst case scenario, traffic would remain at acceptable levels with up to 225 students and 55 staff during Phase II. Tr. 39-41. Mr. Kaufman testified that an acceptable cap for Phase I would be 110 students and 20 staff. The appropriate Phase II and III caps would be 225 students and 55 staff. These are the same because, according to Mr. Kaufman, the parking lot and transportation facilities will be capable of handling the full numbers of children and staff by Phase II. Tr. 60-67.

Since the record supports this request, the Hearing Examiner will recommend the following caps on the number of Siena students and staff on site at any given time:

Phase I	110 students	20 Staff
Phase II	225 students	55 Staff (or the number of staff parking spaces, whichever is less)
Phase III	225 students	55 Staff (or the number of staff parking spaces, whichever is less)

However, the Staff caps are modified by the parenthetical clause “or the number of staff parking spaces, whichever is less” to ensure adequate parking, as will be discussed below. The same caps would apply to summer programs.

**d. Hours of Operation:**

The regular academic year will begin after Labor Day and end in mid-June. Second Amended Statement of Operations, Exhibit 40(a), p. 9. Hours of operation for any on-site activity, as recommended by the Planning Board (Exhibit 19(a)), and agreed to by Petitioner, will be from 7:30 a.m. until 6:00 p.m., Monday through Friday, except for special events when the facility can stay open as late as 9:00 p.m., and Saturday, 8:00 a.m. until 5:00 p.m. For most students, Siena School's operating hours are 8:30 a.m. to 3:30 p.m., but some sport practices and games will take place after school hours. Exhibit 17, p. 4.

There is a small aftercare program which operates from 3:45 until 6:00 p.m., currently with about 10 or 12 students. Tr. 58. It will continue allowing supervised homework study session and/or engaging in enrichment clubs such as film society, origami and cooking. Exhibit 40(a), p. 15.

The outdoor play areas would be used off and on from 8:30 a.m. to 3:30 p.m. No amplified music will be played outside, but Mr. Kaufman would like to have reasonable exceptions allowed. Tr. 77-80. The site is surrounded by a mature tree stand, and physical activity will be directed towards Sligo Creek Parkway, away from the residences. Exhibit 17, p. 16.

In addition to the school-year academic program, the School proposes to continue many of the same summer programs that are offered at its current location. Exhibit 40(a), p. 15. Currently, Siena offers half-day summer school programs in reading, writing, math and art, as well as drama offerings by Imagination Stage, a children's theater program in Bethesda, Maryland. At the new site, the School plans to offer a full-day program in academics and the arts, with on-site options in athletics. Siena's current summer program operates from 8:30 a.m. to 3:30 p.m., Monday through Friday, from mid-June until early August, and is open to the community.

**e. Coordination with the Boys and Girls Club:**

Petitioner is proposing to eventually absorb the existing private club special exception use, as an ancillary use to the private educational institution, under Zoning Ordinance §59-G-2.19(b), rather than having it continue under a separate special exception. However, the sales contract between Petitioner and the Boys and Girls Club provides that the Club may elect to lease a portion of the building for its continued use for up to eight years from the date the sale is completed. Exhibit 9(a), p. 14, Clause 6(b)(3).

As described by Technical Staff (Exhibit 17, p. 3), the Boys and Girls Club will continue to offer its before- and after-school program as well as its summer camp in a leased portion of the school. Approximately 20 students arrive for before-care, by car, around 7:30 a.m., prior to the start of the Siena School, and are bused to the local schools between 8:30 a.m. and 9:00 a.m. The reverse occurs in the afternoon, with up to 100 children arriving in buses between 2:50 p.m. and 4:25 p.m., and leaving at varying times, up to 7:00 p.m. Approximately 80 children per week are enrolled in the Boys and Girls Club summer program, with the hours of operations between 7:30 a.m. and 7:00 p.m., Monday through Friday.

The anticipated integration of the two uses in the building was described by Siena's Head of School, Clay Kaufman. Siena School students arrive between 8:00 and 8:30 a.m., using carpooling and Metro. There are no cars from Boys and Girls Club doing any kind of pickup in the morning when Siena School is starting. There is an overlap of students in the building, but not of cars arriving at the same time. There will be a staff member outside the school every morning to monitor arriving students. According to Mr. Kaufman, the school will have plenty of queuing length for cars coming in. Tr. 42-46.

The Siena School will occupy the lower level, and the Boys and Girls Club will have office space and a big community room where their students will be in the morning. Tr. 47. In

the afternoon, some of the high school students arrive at the Boys and Girls Club between 3:00 and 3:45. Then the elementary students arrive at the Boys and Girls Club after that, between 3:45 and 4:00 p.m. Siena School students will all leave at 3:30 p.m., except for a handful of children playing on the basketball team, or the soccer team. The bulk of the Siena School pickup is between 3:20 and 3:30 p.m.. Thus, the Siena School students will be gone before most of the Boys and Girls Club children have arrived. Mr. Kaufman described the shared uses as “dovetail[ing] very nicely.” Tr. 48.

The Hearing Examiner fears that this coordination may prove more difficult than anticipated, and he has therefore recommended a condition, discussed in Part IV.A. of this report to ensure that impacts on the community from the joint operations of the Siena School and the Boys and Girls Club can be monitored by the Board of Appeals.

**f. Special Events:**

The plan for special events at the Siena School is set forth in detail in the Second Amended Statement of Operations, Exhibit 40(a), pp. 9-12. It is quoted below:

Like all schools, Siena will host occasional evening and weekend activities, meetings and guest lectures. On-site activities will generally be limited to the number of participants that can be accommodated by available on-site parking. For the larger events (up to 8 per year) (e.g., back-to-school night, graduation), the school has reached an agreement with MNCPPC allowing overflow parking at Argyle Park/Schweinhaut Senior Center, which has approximately 150 parking spaces within walking distance of the school. Special arrangements to avoid conflicts with events at the Schweinhaut Center, and to avoid off-site parking in the surrounding residential neighborhood, are detailed in a Transportation Management Agreement incorporated in the record of this application.

Specifically, the School presently contemplates conducting the following special events:<sup>8</sup>

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<sup>8</sup> The Hearing Examiner notes that seven (not eight) special events are listed in the table (including two occurrences of the Siena Educational Lecture). Graduation was left out of the table, although that event is mentioned in the introductory paragraph quoted above, and it is clearly an inherent activity of schools.

<u>EVENT</u>	<u>FREQUENCY</u>	<u>ATTENDEES</u>	<u>PARKING AND TRAFFIC MANAGEMENT</u>
Back to School Night	1 September	Open to all families. Attendance typically involves at least 1 parent of 80% of the students. Therefore, a range of 60 to 150 cars could be expected to be used to visit the campus with a maximum average of 1.5 persons per vehicle in attendance or 60 to 225 people.	Parking will be provided on the Siena property (ultimately 63 spaces) with auxiliary parking (150 spaces) to be provided on the adjacent Schweinhaut Senior Center property. Parents/visitors can walk to the School or be shuttled by School vans. School staff will monitor the on-site parking and driveway entrance to facilitate parking, ingress and egress and vehicle flow.
Arts Night	1 (Early December)	Open to all families. Attendance typically involves at least 1 parent of 70% of the students. Therefore, the range of use will be: Cars: 50-160; People: 50-240.	Parking will be provided on the Siena property (ultimately 63 spaces) with auxiliary parking (150 spaces) to be provided on the adjacent Schweinhaut Senior Center property. Parents/visitors can walk to the School or be shuttled by School vans. School staff will monitor the on-site parking and driveway entrance to facilitate parking, ingress and egress and vehicle flow.
Science Fair	1 (April)	Open to elementary and middle school families. Attendance typically involves 1 parent of 50% of the students. Therefore, the range of use will be: Cars: 35-125; People: 35-190.	Parking will be provided on the Siena property (ultimately 63 spaces) with auxiliary parking (150 spaces) to be provided on the adjacent Schweinhaut Senior Center property. Parents/visitors can walk to the School or be shuttled by School vans. School staff will monitor the on-site parking and driveway entrance to facilitate parking, ingress and egress and vehicle flow.
Academic Open House	1 (Spring)	Open to all school families. Attendance typically involves at least 1 parent of 75% of the student body. Therefore, the range of	Parking will be provided on the Siena property (ultimately 63 spaces) with auxiliary parking (150 spaces) to be provided on the adjacent Schweinhaut Senior Center property. Parents/visitors

		usage will be: Cars: 55-170; People: 55-255.	can walk to the School or be shuttled by School vans. School staff will monitor the on-site parking and driveway entrance to facilitate parking, ingress and egress and vehicle flow.
Siena Educational Lecture	2 (Fall, Spring)	Open to families and friends of the School. Attendance is more of a function of the topic than the enrollment size of the School. Attendance of 100 persons and 65 cars is expected.	Parking will be provided on the Siena property (ultimately 63 spaces) with auxiliary parking (150 spaces) to be provided on the adjacent Schweinhaut Senior Center property. Parents/visitors can walk to the School or be shuttled by School vans. School staff will monitor the on-site parking and driveway entrance to facilitate parking, ingress and egress and vehicle flow.
Sports Banquet	1 (May-June)	Given the size of Siena's sports program, a maximum of 100 attendees and 65 cars is expected.	Parking will be provided on the Siena property (ultimately 63 spaces) with auxiliary parking (150 spaces) to be provided on the adjacent Schweinhaut Senior Center property. Parents/visitors can walk to the School or be shuttled by School vans. School staff will monitor the on-site parking and driveway entrance to facilitate parking, ingress and egress and vehicle flow.

All special events listed above will occur during weekday evenings. The events will commence after any programs operated by the Boys and Girls Club have been completed for the day.

As will be discussed in the next section, the Hearing Examiner finds that the parking arrangement that Petitioner has negotiated with Maryland-National Capital Park and Planning Commission (*i.e.*, the use of 150 auxiliary parking spaces in the nearby Argyle Park and the Margaret Schweinhaut Center for Siena School's eight big events) will provide adequate parking for special events to avoid an undue imposition on the neighborhood.

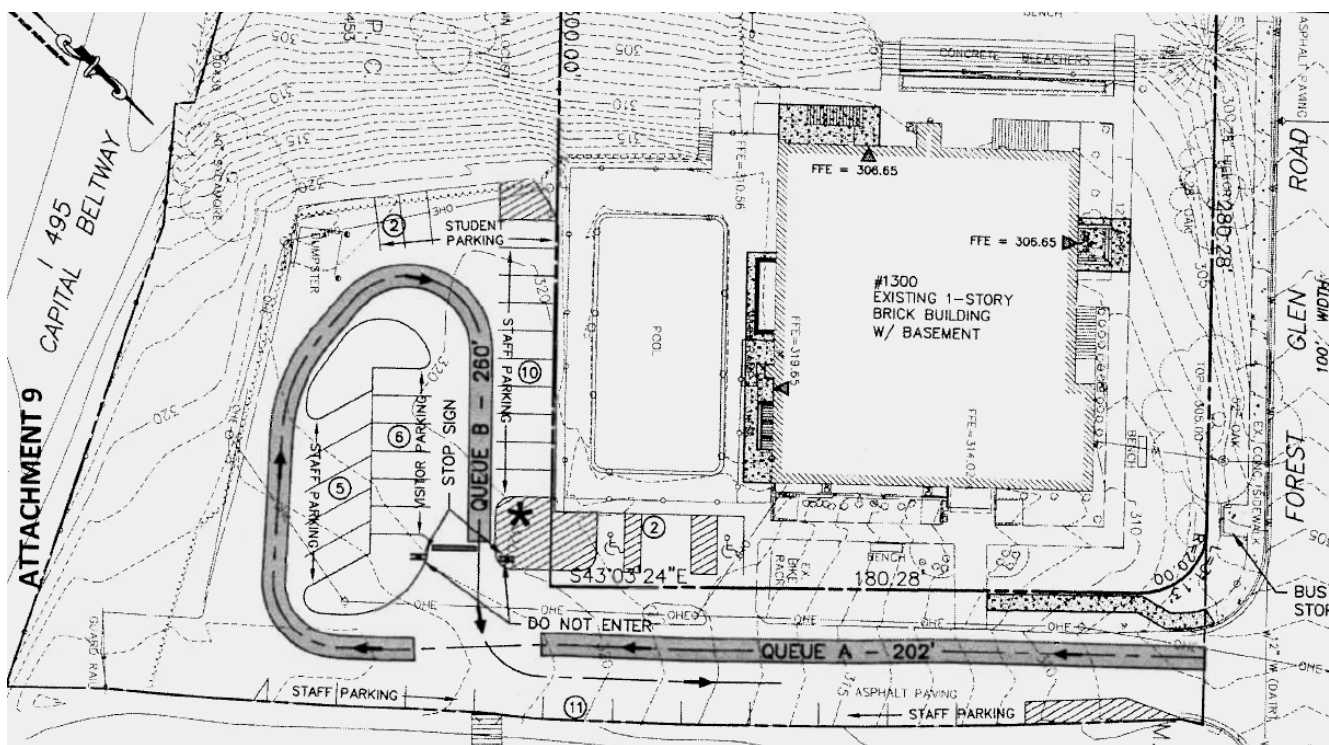


## **7. Parking, Pick-up, Drop-off, Shading and Waiver Issues:**

The number of parking spaces required for a private educational institution is set forth in Zoning Ordinance §59-E-3.7. It provides that there must be:

One parking space for each employee, including teachers and administrators, plus sufficient off-street parking space for the safe and convenient loading and unloading of students, plus additional facilities for all student parking.

Under Phase I, Petitioner will be re-striping the parking lot. There will be designated parallel parking spaces along the east side of Beattie Drive, along the access drive. The main parking lot in the south end of the property will also be re-striped to introduce a parking island in the center, parking along the south end of the site, adjacent to the pool area, and the ADA parking spaces. Tr. 113-116. The Phase I Parking-Queuing Plan (Exhibit 23(a)) is shown below:



Phase I Queuing Tabulation	
Enrollment	90
Maximum Queue (Total Cars)	17
Maximum Queue (Length)	340'
Queue Length Provided	462'

Phase I Parking Tabulation	
Siena School Staff	20 Spaces
Student Drivers	3 Spaces
Boys and Girls Club Staff	4 Spaces
Visitor Parking	6 Spaces
Total Parking Required	33 Spaces
Parking Available	36 Spaces

### **LEGEND**

- \* PICK-UP / DROP-OFF LOCATION
- # PARKING COUNT

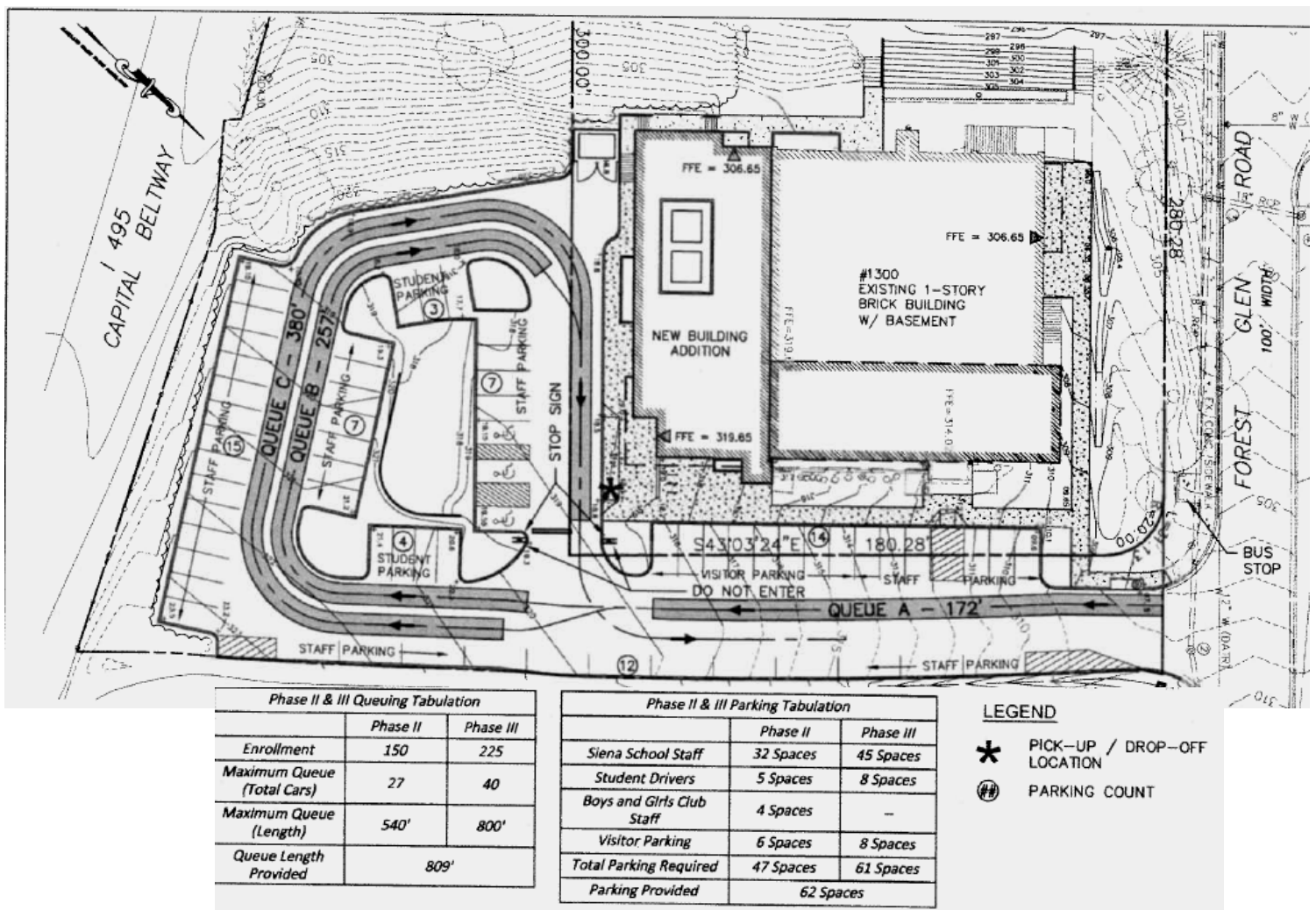
Under the Phase I Parking-Queuing Plan, Petitioner proposes to have 22 parking spaces for employees, 4 spaces for Boys and Girls Club staff, 3 student spaces, 6 visitor spaces and 2 additional handicapped spaces. (Exhibit 23(a)).

Since Phase I calls for 20 staff members, the plan for 22 staff parking spaces (in addition to 4 spaces for Boys and Girls Club staff) meets that portion of the Zoning Ordinance requirement. The number of students permitted to park on site will be limited by the school to ensure that the 3 spaces provided will be sufficient, according to the Transportation Management Plan (TMP). Exhibit 37(a), p. 9. The needed space for loading and unloading students will be provided by bus transportation, car pooling and an extensive queuing system (approximately 462 feet of queue length in Phase I), as shown on the Phase I Parking-Queuing Plan (Exhibit 23(a)). Technical Staff found that based on Petitioner's TMP, "the proposed reduced parking will be sufficient throughout all stages of development." Exhibit 17, p. 14. Petitioner's transportation expert, Craig Hedberg, testified that Exhibits 23(a) and(b) demonstrate that the stacking distances provided would be adequate storage room for cars without flowing onto the external street system, *i.e.*, onto Forest Glen Road. He further opined that this circulation system in both phases would be safe, adequate and efficient to ensure there would be no conflicts with vehicles and students arriving. Tr. 90-93.

The potential problem with Phase I parking that concerns the Hearing Examiner is the level of demand for parking by the Boys and Girls Club. The record does not contain sufficient information to project whether the four spaces planned for that use will be adequate. The Hearing Examiner notes that Zoning Ordinance §59-G-2.42(e)) requires a private club special exception to provide 2.5 parking spaces per each 1,000 square feet of floor area. That does not appear to be feasible unless floor space allocated to the Club under the leaseback is severely limited.

Under Phase II, the access drive coming in will be widened slightly to introduce head-in parking along the east side of the building. The back parking lot will also be reconfigured to

introduce the micro-bioretention area in the center, and it will be expanded slightly to the south to add additional head-in parking along the south end of the property. Tr. 113-116. According to the Development Standards Table in the revised Site Plan for Phase II and III (Exhibit 43(a)), 45 parking spaces will be required for employees and 46 spaces will be provided. In fact, since the number of employees will be capped at 55 in both Phases II and III, that is the number of employee spaces that should be provided pursuant to Zoning Ordinance §59-E-3.7. Moreover, additional spaces will be needed for Boys and Girls Club activities until that organization leaves, which may not occur for 8 years. Since Mr. Kaufman testified that Phase III might begin as early as six years after approval, there must be parking available for Boys and Girls Club activities even during Phase III. Tr. 57-58. The Phase II & III Parking-Queuing Plan (Exhibit 23(b)) is below:



The Hearing Examiner's count of parking spaces shown on the Phase II & III Parking-Queuing Plan yields a count of 47 parking spaces marked as "staff parking." However, there are also 8 visitor spaces and 7 student spaces shown on the Phase II & III Parking-Queuing Plan. By prohibiting students from driving to school and converting one visitor spot to a staff spot, Petitioner may be able to demonstrate a number of staff parking spaces equal to the number of staff on site. Until Petitioner does so, the proposed cap on staff must be limited to the number of staff parking spaces, as shown in the condition recommended by the Hearing Examiner. Moreover, another condition, discussed in Part IV.A. of this report, is recommended to ensure that the combined operations of the Siena School and the Club do not unduly injure the community.

Technical Staff's analysis of parking (Exhibit 17, pp. 13-14) concluded that the extensive queuing system (approximately 809 feet of queue length in Phases II and III), as shown on the Phase II & III Parking-Queuing Plan (Exhibit 23(b)).<sup>9</sup> As discussed above, both Technical Staff and Mr. Hedberg concluded that the proposed queuing system would be safe and sufficient for loading and unloading students. In addition, the proposed TMP, which was approved by Technical Staff (Exhibit 37), will encourage car pooling and use of public transportation. "Based on the existing and proposed transportation mitigation, staff estimates that the actual need for parking is reduced significantly." Exhibit 17, p. 14.

As mentioned above, for the larger events (up to 8 per year) (*e.g.*, back-to-school night, graduation, etc.), the school has reached an agreement with MNCPPC to allow overflow parking at Argyle Park/Schweinhaut Senior Center, which has approximately 150 parking spaces within walking distance of the school. Exhibit 24. Mr. Kaufman testified that although the agreement from Park and Planning refers to four or five big events per year, that agency was agreeable to the

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<sup>9</sup> The Hearing Examiner notes that Technical Staff listed this figure as 799 feet, but it is shown as 809 feet on the Plan.

eight big events the school anticipates, as specified in the Staff report's proposed condition numbered 2. A 14-passenger van will be available to shuttle people from the Argyle Park parking lot to the campus. Tr. 67-71.

Technical Staff determined that, ". . . the use of the nearby senior center parking will be able to absorb any overflow parking off of the adjacent, residential streets. Therefore, Staff [found] that the proposed reduced parking will be sufficient throughout all stages of development." Exhibit 17, p. 14.

Technical Staff also recommended that additional shading be required for internal parking and driveways, and proposed a condition (Staff's recommended condition number 15) to that effect. That issue has been mooted because Petitioner has already revised its Landscape Plan (Exhibit 33(d)) to adding the recommended additional shade trees.

Finally, Petitioner seeks a waiver of the parking setback requirements of Zoning Ordinance §59-E-2.83. Petitioner's attorney, Jody Kline, explained the waiver request in a letter dated November 14, 2011 (Exhibit 15):

This waiver request is intended to address the nineteen (19) perpendicular parking spaces that will be striped along the eastern side of the future school building that will straddle the lot line of the property that Siena School has contracted to purchase and the land of M-NCPPC that Siena School will lease from M-NCPPC.

Section 59-E-2.83(b) ("Parking and Loading Facilities for special exception uses in residential zones") requires that a special exception use provide doubled side-yard setbacks for parking facilities when located in residential zones. In this case, for an R-60 zoned property requiring a minimum eight foot (8') side yard setback, the setback between the parking facility and the perimeter property line must be a minimum of sixteen feet (16'). In this instance, because parking spaces will straddle the lot line, a waiver of sixteen feet (16') is requested for the following reasons:

1. The waiver allows for more parking within the area (owned and leased) by the Siena School so that there is no likelihood of School visitors parking off site.
2. For all intents and purposes, the total area under the School's control will be subject to a special exception and the "interior" lot line is an irrelevancy.
3. Property that is adjacent to the area where organized parking will occur is owned by M-NCPPC and is open parkland used for recreational activities which and

will not be adversely affected by the granting of the requested waiver.

At the hearing, Mr. Kline clarified that the parking waiver request is for both the parking area that straddles the property line with the leased area, and for the parking spaces adjacent to the outer limit of the leased area. Tr. 113-116. This clarification makes sense since the parking spaces do not comply with setback requirements in either area.<sup>10</sup>

Waivers of parking requirements are permitted pursuant to Zoning Ordinance §59-E-4.5, if all adjoining property owners and affected citizen associations have been notified for comment, and the Board of Appeals finds that the requirements are not necessary to accomplish the objectives in Section 59-E-4.2. The adjoining property owners and affected citizen associations were sent a notice on December 23, 2011 (Exhibit 22), and no objections were received.

The objectives of Zoning Ordinance §59-E-4.2 are to protect the health, safety and welfare of those who use any adjoining land or public road that abuts a parking facility; to protect the safety of pedestrians and motorists within a parking facility; to ensure safe circulation of traffic within the parking facility and the proper location of entrances and exits to public roads so as to reduce or prevent traffic congestion; and to provide for appropriate lighting, if the parking is used after dark. There is no evidence that the waiver of setbacks will offend any of these objectives.

Technical Staff indicated that it supports the waiver request (Exhibit 17, p. 14), and the Hearing Examiner agrees that this is a sensible solution since none of the area covered by the waiver is adjacent to residential areas. It all abuts parkland screened by extensive tree stands.

Given this record, the Hearing Examiner finds that parking proposed for the subject site will be adequate, as conditioned,<sup>11</sup> that it will not create adverse effects on the neighborhood, and that the requested parking waiver should be granted, to the extent it is needed.

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<sup>10</sup> It could be argued (but has not been) that a parking waiver is not required for the parking spaces located wholly on the leased area because that land is owned by M-NCPPC. *See* Zoning Ordinance §59-G-2.19(e).

<sup>11</sup> With the caveat previously mentioned about parking for Boys and Girls Club activities.



**8. Public Facilities, Including Transportation, Water and Sewer:**

Petitioner's transportation planner, Craig Hedberg, addressed issues of potential traffic volume and traffic safety at the hearing. Tr. 83-95. Mr. Hedberg undertook a Local Area Transportation Review (LATR), after getting a scope of work direction from Park and Planning indicating which intersections needed to be analyzed. These included Forest Glen at Georgia Avenue, Dameron Drive at Forest Glen, Sligo Creek Parkway at Forest Glen, and Forest Glen at the existing and proposed driveways. Mr. Hedberg took the peak hour traffic counts as described in the LATR Guidelines for these intersections. In addition, he got a vehicle trip count for the existing operations so that he would have a basis on which to project future peak hour trips based on the current trip generation. The local area review analysis (Exhibit 13(a)) revealed that all intersections were within the critical lane volume standard for the Kensington/Wheaton policy area, except for Georgia Avenue and Forest Glen at the a.m. peak hour. Tr. 85.

In order to project the impact on the area under the worst case scenario, Mr. Hedberg used the zip code trip distribution for the existing students travelling to the existing school location, and reassigned those existing trips to the proposed new location. He then projected additional new trips up with the assumption of the full proposal of 225 students. Mr. Hedberg found that all the intersections met the critical lane volumes except again for Georgia and Forest Glen Road. However, he noted that there would actually be no negative impact from the school expansion at that intersection, primarily because there have already been some lane re-designations on Forest Glen Road, so there is a dual northbound-to-westbound left turn lane. Since that is where the trips that are going to the proposed site would travel, they did not become a critical movement, and the net result was that there will be a zero change in the critical lane volume at that intersection from the school's increased enrollment. In other words, the school's expansion to full enrollment will not cause the traffic to exceed background levels. Tr. 85-86.

Mr. Hedberg also did a Policy Area Mobility Review (PAMR). He determined that there would be a net increase of approximately 140 peak-hour trips, after subtracting out current trips and eventual departure of the Boys and Girls Club. Mr. Hedberg testified that he used a worst case scenario to determine impacts on the capacity of the transportation network. His study shows that even if you consider that the Boys Club never moved, the full school could be developed without having an adverse impact on the surrounding intersections. Tr. 86-87.

Mr. Hedberg further testified that there would be adequate room for stacking traffic on the site, but noted that a Transportation Management Plan (TMP) needed to be developed. Tr. 88-89. Petitioner did submit a TMP and modified it after receiving comments from Technical Staff. The final TMP (Exhibit 36(a)) was approved by Technical Staff (Exhibit 37).

Mr. Hedberg took issue with the question raised in the Planning Board's transmittal letter (Exhibit 19(a)), which suggested that the impact on the intersections from the overlap of the existing Boys and Girls Club and the relocated Siena School had not been adequately addressed. He noted that his analysis did not subtract out any of the traffic from the Boys and Girls Club at the surrounding intersections. That traffic burden remained in the traffic base, and the new trips from the relocated school were added on top of that. Therefore, all potential traffic has been accounted for.<sup>12</sup> Tr. 89-90.

As mentioned earlier in this report, Mr. Hedberg further testified that Exhibits 23(a) and (b) demonstrate that the stacking distances provided would be adequate storage room for cars without flowing onto the external street system, *i.e.*, onto Forest Glen Road. He further opined that this circulation system in both phases would be safe, adequate and efficient to ensure there would be no conflicts with vehicles and students arriving. Tr. 90-93.

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<sup>12</sup> The Hearing Examiner notes that although the traffic generated by the Boys and Girls Club may have been sufficiently accounted for, the same cannot be said, on this record, for parking needed by the Club.

Mr. Hedberg concluded that the traffic would not cause a nuisance or an adverse impact on the surrounding neighborhood, and the proposed setup would be safe for both vehicular and pedestrian traffic under all phases even if the student density exceeded 87 students per acre. In his opinion, the relocation of the Siena School will not cause an adverse traffic consequence on the community. Tr. 93-94.

Technical Staff agreed with Mr. Hedberg's analysis. The proposed project is within the Kensington/Wheaton Policy Area, which has a congestion standard of 1,600 Critical Lane Volumes (CLV). The calculated critical lane volumes expected from traffic produced by the proposed school are shown in Table 2, reproduced below from the Staff report (Exhibit 17, p. 6):

**Table 2: Calculated Critical Lane Volume [footnotes omitted from Table]**

Analyzed Intersection	Weekday Peak Hour	CLV Congestion Standard	Traffic Condition		
			Existing	Background	Total
Forest Glen Road and Boy & Girls Club Driveway	Morning	1,600	506	517	638
	Evening		427	427	390
Forest Glen Road and Sligo Creek Parkway	Morning	1,600	1,116	1,132	1,251
	Evening		923	916	932
Forest Glen Road and Dameron Drive	Morning	1,600	931	931	1,001
	Evening		816	816	827
Forest Glen Road and Church Driveway	Morning	1,600	848	842	881
	Evening		760	760	762
Forest Glen Road and Georgia Avenue	Morning	1,600	<b>1,634</b>	<b>1,634</b>	<b>1,634</b>
	Evening		1,567	1,572	1,575

With the exception of the Forest Glen Road/Georgia Avenue intersection, the CLV values at all analyzed intersections are less than the 1600 CLV congestion standard for the Kensington-Wheaton Policy Area. However, even at that intersection, "The redistribution of the site-generated traffic from the existing to the proposed school site results in no increase in the CLV value from the background to the total traffic condition. Thus, the LATR test is satisfied." Exhibit 17, p. 6.

As noted by Staff, the school will continue to be in close proximity to public transportation. Currently, 20% of students arrive via public transportation and 30% carpool, while 27% of the employees use public transportation. Petitioner proposes to offer incentives to increase carpooling in its student population. TMP (Exhibit 36(a), pp. 7-8).

With regard to PAMR, Technical Staff noted that Petitioner will be required to mitigate 10% (*i.e.*, 14 trips) of the 140 new trips that will be generated. This will be accomplished by the payment of \$163,800 to the County (14 trips at \$11,700 per trip). According to Staff, the payment may be staggered with the development phases; however, any payment schedule must be made consistent with the issuance of all building permits relating to the phases of physical and operational improvements. If a partial payment agreement is not established, then the full amount will be due at the time of initial building permits. Exhibit 17, p. 7.

Technical Staff concluded that, “The site is adequately served by public facilities and will continue to be adequately served under the growth management policies in effect when the application was filed. . . . The proposal will not reduce the safety of vehicular or pedestrian traffic.” Exhibit 17, p. 12. Moreover, Petitioner’s civil engineer, Aaron Smith, testified that sewer and water service will be adequate to handle the expanded facility in this location, with a new water service constructed under Phase I to meet the fire requirements. Otherwise, there are adequate facilities. Tr. 119.

Based on this record, the Hearing Examiner finds that Petitioner will satisfy the Growth Policy standards and that there are adequate public facilities to serve this use. Moreover, given the analysis performed by Mr. Hedberg and Technical Staff, and the absence of any contrary evidence, the Hearing Examiner finds that Petitioner has demonstrated that the relocation of the Siena School to the subject site will not create traffic volume compatibility problems for the general neighborhood in any phase of the development.

### **E. The Environment**

As shown in the aerial photograph on page 5 of this report, the subject site consists of two parts. The central part is comprised of 1.2 acres owned by the Boys and Girls Club (Parcel N458). It is surrounded on three sides (west, south and east) by a 1.5-acre portion of a 33-acre tract owned by the M-NCPPC (Parcel P706). The remainder of Parcel P706, which is bisected by I-495, is M-NCPPC parkland and is used predominantly as active recreation space, including the Sligo Creek Golf Course. Exhibit 17, p. 7.

Although the special exception lease covers a small portion of Parcel P706, M-NCPPC considers the parcel in its entirety for forest conservation regulatory purposes. Thus, the Natural Resource Inventory/Forest Stand Delineation (NRI/FSD #420111360), approved on June 17, 2011 (Exhibit 6(a)), covers the entire 33.15-acre parcel. It contains 10.12 acres of forest and 0.61 acres of environmental buffers from Sligo Creek, but no streams or wetlands. The property is not within a special protection area. According to Staff, “The proposed project does not have any proposed activities within any streams, wetlands, or environmental buffers and is in compliance with the Environmental Guidelines.” Exhibit 17, p. 7.

Technical Staff reports that the property is subject to the Chapter 22A, Montgomery County Forest Conservation Law, but the project is exempt from the requirements of submitting a Forest Conservation Plan per an exemption (#42012011E) granted by Staff on July 25, 2011. Exhibit 6(c). This exemption is based on an activity occurring on a tract of land where no more than 5,000 square feet of forest will be cleared. The site does have some forest, but it will not be affected by the proposed use. Tr. 99-101.

Aaron Smith, Petitioner’s civil engineer, testified that the stormwater management concept (Exhibit 8) has been approved by the Department of Permitting Services in a letter of December 1, 2011 (Exhibit 29). The stormwater management will be constructed as part of

Phase II of construction. Stormwater management measures include micro-bioretenment areas; a grass swale along the north side of the property adjacent to Forest Glen Road, providing treatment for the new sidewalk along the frontage of the property; a green roof on the new building addition being constructed over the existing pool; and porous pavement in the proposed parking area. Tr. 110-111. According to Mr. Smith, the amount of land disturbance will not encroach into the stream valley, and there will be no adverse impacts. In fact, there will be, as part of this project, an environmental benefit to Sligo Creek in that under the existing condition, the paved parking lot goes completely untreated. Under the Phase II construction, where stormwater management is introduced, that parking lot, as well as the access drive and the new building addition, all of the disturbed area under the Phase II construction, will be treated and will provide benefit to Sligo Creek. Tr. 119-120.

Based on this record, the Hearing Examiner finds that there are no environmental issues which should result in the denial of this petition.

#### **F. Community Response**

As mentioned at the beginning of this report, four letters of support for the petition were received on November 30, 2011 (Exhibits 16(a) – (d)). These included two letters of support from neighbors, and letters of support from the South Four Corners Civic Association (SFCCA), the Forest Grove Citizens' Association (FGCA) and the Northmont Citizens' Association (NCA). Two witnesses from the community testified at the hearing in support of the petition (although one of them, J. David Meininger, expressed some concerns about traffic and parking, and management of nighttime activity. Tr. 31.). No opposition appeared at the hearing, and no opposition letters have been received.

Margot Cook, the past president of the Forest Grove Citizens' Association (FGCA), testified that the Siena School was doing good work with their students, and that she, as well as others in the community, supported the petition. Tr. 19-25.

J. David Meininger testified that he is the elected president of the South Four Corners Civic Association (SFCCA), but he spoke only as an individual. The SFCCA has not taken a formal position, but their chief concerns relate to traffic and parking, and management of nighttime activity. Tr. 31. Based on the expectations that have been given the community by Clay Kaufman, one of Siena School's heads, and the management team of the Siena School, he is in favor of the special exception. Tr. 30.

The community's concerns about parking were addressed in Part II. D. 7 of this report and issues relating to traffic volume and safety were addressed in Part II. D. 8 of this report. Based on the record discussed herein, the Hearing Examiner finds that Petitioner has appropriately addressed the neighbors' legitimate concerns, and they do not warrant denial of the subject petition. Conditions have been recommended in Part V of this report to ensure that the neighborhood is protected regarding parking and potential traffic.

### **III. SUMMARY OF THE HEARING**

Petitioner called four witnesses at the hearing, Clay Kaufman, one of Siena School's two Heads of School; Craig Hedberg, a traffic engineer; Aaron Smith, a civil engineer; and F. Thompson Wheeler, an architect. Two witnesses from the community, Margot Cook and J. David Meininger, testified in support of the petition. There were no opposition witnesses.

At the beginning of the hearing, the Hearing Examiner noted that his wife teaches at another private school in the County, the Norwood School, and invited any objections to his presiding over the case. There were none. Tr. 7. The Hearing Examiner also pointed out that



some errors in the Technical Staff report (at p. 7) and in its Attachment 6, were corrected by Staff in a later submission. Exhibit 21. These were directly entered onto the Staff report in the file by the Hearing Examiner to avoid confusion. The Hearing Examiner also made some corrections of typographical mistakes on page 1 of the Staff Report in the file, all of which he announced at the hearing. Tr. 8-9.

In addition, the Hearing Examiner asked Petitioner to submit a Transportation Management Plan (TMP) and an amended Statement of Operations, stating with greater particularity the special events expected at the school, including the nature of the event, the frequency with which it occurs, the number of participants and cars that are expected and how they would be handled for each event. Tr. 9-12.

Petitioner's attorney, Jody Kline, Esquire, indicated that the timing of obtaining the special exception is critical because the school plans to occupy the space itself on September 1, 2012. It therefore needs to move forward with construction as soon as possible. Tr. 14.

Mr. Kline also explained that Petitioner expects to eventually extinguish the Boys and Girls Club's private club special exception and incorporate it into Siena School's special exception under the other uses that are permitted with schools. Eventually, if the special exception is granted, the Boys and Girls Club and Siena School will write the Board of Appeals and ask to extinguish the Boys and Girls Club special exception. Tr. 16.

Mr. Kline stated that Petitioner adopts Technical Staff's recommended definition of the neighborhood and is agreeable to Staff's recommended conditions, except for changes already noted and the recommended condition number 13, about ADA compatibility, which has been satisfied by design changes. Tr. 16-17.

Finally, Mr. Kline indicated that concerns about the existing height of the building have been addressed by a letter from the Department of Permitting Services (Exhibit 31) indicating that in the future they will treat Beattie Drive/Omaha Beach Drive as a street for purposes of height measurement. Tr. 19.

At the conclusion of the hearing, the record was held open for revisions to the Statement of Operations resulting from the hearing and for the filing of additional materials by January 10, 2012, including a Transportation Management Plan (TMP), as requested by the Hearing Examiner. Other parties and Technical Staff were given until January 25, 2012, to comment on the new filings. Tr. 150-151.

#### **A. Petitioner's Case**

##### **1. Clay Kaufman (Tr. 33-84; 92; 118-119) :**

Clay Kaufman testified that he is one of two Heads of School of the Siena School. He indicated that the conditions recommended by Technical Staff and the Planning Board are acceptable to the school. Tr. 33-34.

Mr. Kaufman described the background of the Siena School, which was founded in 2006 with 15 students to educate bright college bound students with mild to moderate language-based learning differences. The school is unique in the County, and it has 78 students currently, in grades four through 12. Presently Siena is located nearby in the Montgomery Hills Baptist Church, on the corner of Forest Glen Road and Georgia Avenue. The location has served the school well, but it needs more room for expansion, which the subject site will provide, while remaining in the neighborhood. Tr. 34-36.

According to Mr. Kaufman, the Boys and Girls Club has been operating on the site for quite a number of years, as an afterschool program, primarily, with a small before school

program. Since more of their students are coming from other neighborhoods, ultimately they will be looking to be in a location that might serve their students more closely. Siena School has a contract with the Boys and Girls Club allowing the Club to remain on site for up to eight years. Mr. Kaufman feels that the programs are complementary. They run after school programs, primarily, so it seemed to be a really great fit to make the best use of that facility without overloading it.

In the first phase, Siena School will grow a little from what it is now, but in the second phase, Siena School will build over the pool, which will allow the school to expand. Mr. Kaufman stated that the programs are still very complementary, because the Club's students don't really arrive until Siena's students leave. Even in Phase II, Petitioner does not expect there to be overwhelming numbers, and the arrival and departure schedules will dovetail nicely. By the time Phase III begins, Mr. Kaufman expects that the Boys and Girls Club will be gone. Tr. 37-39.

In Phase I, Petitioner will renovate the interior of the existing building and re-stripe the parking lot. Several large open rooms will be converted into classrooms, which will allow Petitioner to fit 90 to 100 kids in the space, depending on which grades they are in. The mechanical and electrical systems do not meet Code, so Petitioner will have to rehab the entire building before moving the school, grades four through 12, into the building. Phase I will accommodate approximately 100 to 110 kids, 11 per classroom, times 10 classrooms, though Mr. Kaufman prefers not to have a hard cap. Tr. 39. [According to Mr. Kline, his traffic engineer will testify that even in a worst case scenario, with 225 students, the transportation network still accommodates everything. Tr. 41.]

Phase II will be determined by Petitioner's enrollment growth. In Phase II, Petitioner would dig out the existing pool that's next to the building, build a lower level, and then match the number of stories of the existing building. That would get Siena School up to roughly 130-140

students. Phase II would not occur in the first two or three years, and it will depend on finances and enrollment. Tr. 39-41.

Mr. Kaufman described how Siena School operations would interface with the Boys and Girls Club in phases one and two. The Boys and Girls Club have about 20 students in the morning for before care. Those students arrive by about 7:30 a.m. by car. They are then taken to school by several buses that arrive in the morning over Forest Glen Road to pick up the kids, and they take them off to school around 8:45-9:00. Siena School students arrive between 8:00 and 8:30, using carpooling and Metro. There are no cars from Boys and Girls Club doing any kind of pickup in the morning when Siena School is starting. There is an overlap of students in the building, but not of cars arriving at the same time.

There will be a staff member outside the school every morning to monitor arriving students. The school will have plenty of queuing length for cars coming in. Tr. 42-46.

In Phase I, the Siena School will occupy the lower level of the school. The gym is on the upper level, and the Boys and Girls Club has office space and a big community room where their students will be in the morning. Tr. 47.

In the afternoon, some of the high school students arrive at the Boys and Girls Club between 3:00 and 3:45. Then the elementary students that arrive at the Boys and Girls Club after that, between 3:45 and 4:00. Siena School students will all leave at 3:30, except for a handful of kids playing on the basketball team, or the soccer team. The bulk of the Siena School pickup is between 3:20 and 3:30. The Siena School students will be gone before most of the Boys and Girls Club kids have arrived. Thus, it actually dovetails very nicely. Tr. 48.

Petitioner introduced Exhibit 23(a) showing Phase I parking and queuing and Exhibit 23(b) showing Phase II and III parking and queuing. The latter has a double queue. Petitioner's traffic consultant has assured that this circulation pattern will be safe, adequate and efficient,

notwithstanding the coming and goings of different groups. Tr. 49-54. Mr. Kaufman stated it was hard to predict but he feels it would be hard to do Phase II sooner than three or four years, and probably another few years after that for Phase III. Tr. 57-58.

Operating hours are 8:30 to 3:30 for most students, and there is a small aftercare program, currently with about 10 or 12 students. He is satisfied with the hours as they were modified by the Planning Board. Tr. 58.

Mr. Kaufman described some special events at the school – parent-teacher meetings, parent association meetings, back-to-school night, the science fair and the arts evening, which involve most families. The school has a limited summer program, an academic program in the mornings, and an arts program. Siena School proposes to continue to offer a summer program that would involve arts and academics, especially for students who aren't at Siena but need that sort of intervention in their reading, writing and math. Tr. 59.

Mr. Kaufman indicated that an acceptable cap for Phase I would be 110 students and 20 staff. The appropriate Phase II and III caps would be 225 students and 55 staff. These are the same because by Phase II, the parking lot and the transportation facilities are capable of handling the full numbers of children and staff. Tr. 60-67.

For special events, Siena School has an agreement in writing from Park and Planning (Exhibit 24) that the school will be allowed to use Argyle Park and the Margaret Schweinhaut Center for auxiliary parking for its big events. Mr. Kaufman understands that parking in the neighborhood is the number one concern. So for any events that exceed the school's capacity, the few events of the year where the whole school is there, back-to-school night and so on, the school already has an agreement with Park and Planning to use the Margaret Schweinhaut Center, which is only a block away from the school. It has 150 spaces. Mr. Kaufman mentioned that although the agreement from Park and Planning refers to four or five big events per year, they were

agreeable to the eight big events the school anticipates, as mentioned as a condition in the Staff report. A 14-passenger van will be available to shuttle people from the Argyle Park parking lot to the campus. Tr. 67-71.

Petitioner would have up to a maximum of 225 students and 55 staff members. That represents roughly 83.3 students per acre, which is less than the maximum permitted density of 87 student per acre. However, to the extent that children from the Boys and Girls Club are present, there may be a few times when the density is briefly exceeded, prior to the Boys and Girls Club children being transported to their schools or homes. Mr. Kaufman testified that such an exceedances should not create a problem for the school or have an adverse impact on the surrounding neighborhood since there is plenty of room in the facility. Moreover, the property is surrounded on three sides by parkland and the beltway, and the two neighbors who are across the street are screened by a berm. Tr. 72-73.

Mr. Kaufman further testified that there is a significant playing field on the property, and there is an existing playground with play equipment on the site. The play area is actually on the back of the property, behind the building. [According to Mr. Kline, the depth of the road and the depth of the building would yield at least 300 feet of distance from the nearest residence to the area behind the school. There is also open field on the left side, which is probably about 150 feet across from the residences directly on the north side of Forest Glen Road.] Tr. 74-77.

Those play areas would be used off and on from 8:30 a.m. to 3:30 p.m. No amplified music or noise is played outside, but Mr. Kaufman would like to have reasonable exceptions allowed. Tr. 77-80.

Mr. Kaufman noted that having no neighbors on three sides is unusual for a school, especially in a residential neighborhood where normally there are neighbors on every side. The site is thus an ideal place to run a school, that doesn't really transform the nature of the existing

building. And despite the fact that the school will be fairly isolated, Petitioner will continue to communicate openly with the neighbors, and have an open door policy. Petitioner has been in this neighborhood for six years and wants to continue to be a good neighbor.

Mr. Kaufman indicated that Petitioner would provide the two staff members needed to direct the drop-off and pickup process in Phase I and three in Phases II and III. Tr. 92.

Mr. Kaufman also described the Schweinhaut Center and identified photographs of the area appended to the Technical Staff report as Attachments 1 and 4. Tr. 118-119.

2. Craig Hedberg (Tr. 83-95):

Craig Hedberg testified as an expert in traffic engineering and transportation planning. Mr. Hedberg undertook a Local Area Transportation Review (LATR), after getting a scope of work direction from Park and Planning indicating which intersections needed to be analyzed. These included Forest Glen at Georgia Avenue, Dameron Drive at Forest Glen, and Sligo Creek Parkway at Forest Glen, and at the proposed driveway. Mr. Hedberg took the peak hour traffic counts as described in the guidelines for these intersections. In addition, he got a vehicle trip count for the existing operations so that he would have a basis on which to project future peak hour trips based on the current trip generation. The local area review analysis (Exhibit 13(a)) revealed that all intersections were within the critical lane volume standard for the Kensington/Wheaton policy area, except for Georgia Avenue and Forest Glen at the a.m. peak hour. Tr. 85.

Mr. Hedberg used the zip code trip distribution for the existing students, and reassigned those to the new location. He then projected the trips up to the ultimate which was 225 students. Mr. Hedberg found that all the intersections met the critical lane volumes except again for Georgia and Forest Glen Road. However, he noted that there was no negative impact with the school expansion at that intersection, primarily because over the years there have been some lane



re-designations that were conditions of prior approvals on Forest Glen Road, so there is a dual northbound-to-westbound left turn lane. Since that is where the trips that are going to the proposed site would travel, they did not become a critical movement, and the net result was a zero change in the critical lane volume at that intersection from the school's increased enrollment. In other words, it did not exceed background levels. Tr. 85-86.

Mr. Hedberg also did a Policy Area Mobility Review (PAMR). He determined that there would be a net increase of approximately 140 peak-hour trips, after subtracting out current trips and eventual departure of the Boys and Girls Club. Mr. Hedberg testified that he used a worst case scenario to determine impacts on the capacity of the transportation network. His study shows that even if you consider that the Boys Club never moved, the full school could be developed without having an adverse impact on the surrounding intersections. There would be an additional amount of traffic, but one of the intersections that was analyzed was Forest Glen, and it is well within the congestion standards for the County under the total traffic conditions. Tr. 86-87.

Mr. Hedberg further testified that there would be adequate room for stacking traffic on site under the ultimate condition (*i.e.*, full enrollment). As long as there is that coordination of activity associated with the Boys and Girls Club and the school, there should be no problem in the interim stage as well, but the transportation management plan needs to be developed. Tr. 88-89.

Mr. Hedberg took issue with the question raised in the Planning Board's transmittal letter which suggested that the impact on the intersections from the overlap had not been adequately addressed. He noted that he did not subtract out any of the traffic from the Boys and Girls Club at the surrounding intersections. That stayed in the traffic base. He just added on top of that. Tr. 89-90.

Mr. Hedberg further testified that Exhibits 23(a) and(b) demonstrate that the stacking distances provided would be adequate storage room for cars without flowing onto the external street system, *i.e.*, onto Forest Glen Road. In his opinion two staff members would be needed to direct the process in Phase I and three in Phases II and III. He further opined that this circulation system in both phases would be safe, adequate and efficient to ensure there would be no conflicts with vehicles and students arriving. Tr. 90-93.

Mr. Hedberg concluded that the traffic would not cause a nuisance or an impact on the surrounding neighborhood, and the proposed setup would be safe for both vehicular and pedestrian traffic under all phases even if the student density exceeded 87 students per acre. His answer pertains to the entire time the school is in session, that there will not be an adverse consequence by traffic on the community. Tr. 93-94.

3. Aaron Smith (Tr. 96-121):

Aaron Smith testified as an expert in civil engineering. As the project manager, Mr. Smith worked on the development of plans for the site. He described the site using the natural resource inventory-forest stand delineation (NRI/FSD -Exhibit 6(a)). The Boys and Girls property is about 1.2 acres, and it's surrounded by the leased area from Parks and Planning. The 1.2 acres includes the building and portions of the athletic field adjacent on the left side. And the parking and access is almost exclusively on the leased area from Parks and Planning. There is existing forested area on the site that will not be impacted as part of the project. Tr. 99-101.

Mr. Smith described the general overall topography on the property. There is a fair amount of elevation change on the site. The elevation rises away from the school building adjacent to Forest Glen Road towards the Capital Beltway to the south. It then drops off significantly to the west, to the lower playing fields. So there is a rather significant grade on the access drive leading into the property from Forest Glen Road. The parking lot in the back, on the

southern end of the property, is fairly level, and everything drains towards Sligo Creek to the west. Tr. 101.

The revised Phase I and Phase II special exception site plans were marked as Exhibits 27(a) and (b), respectively, and the revised landscaping plan was marked as Exhibit 28. Mr. Smith testified that in Phase I, the site engineering is limited. There will be a new water service to the building in order to meet fire codes, as part of the renovation. Otherwise, the site improvements will be limited to re-striping of the parking lot and some improvements around the exterior of the building to introduce some new entrances to the renovated building. In addition, one of the comments by Technical Staff was to create a sidewalk connection from the public sidewalk on Forest Glen Road, and so that will be done as part of Phase I, as well. Tr. 102-106.

Technical Staff also expressed concern about the lighting, under the Phase I, of an existing walkway access to the lower fields from the upper parking lot. That walkway is located on the south end of the existing building, adjacent to and west of the existing pool. Petitioner proposed a building-mounted light fixture on the existing building wall in that area which will illuminate the walkway, essentially, shining away from the existing building towards the capital beltway and the walkway. It will be shown on a revised plan. Tr. 106-108.

Mr. Smith further testified that the site is subject to the forest conservation law, but it qualifies for an exemption from forest conservation, due to the fact that it is not impacting existing forested areas. So forest conservation measures are essentially to protect the existing forest, and there will be tree protection fencing, some root pruning and signage to protect existing vegetation in place. Exhibits 6(d) and (e) are forest conservation exemption plans. For the subject site, which includes both the leased area and the owned area, there is a forest conservation exemption letter, Exhibit 6(c), dated July 25, 2011. Tr. 108-110.

The storm water management concept (Exhibit 8) has been approved by the Department of Permitting Services in a letter of December 1, 2011 (Exhibit 29). The storm water management will be constructed as part of Phase II of construction. Storm water management measures include micro-bioretenion areas; a grass swale along the north side of the property adjacent to Forest Glen Road, providing treatment for the new sidewalk along the frontage of the property; a green roof on the new building addition being constructed over the existing pool; and porous pavement in the proposed parking area. Tr. 110-111.

Mr. Smith further testified that, pursuant to a Technical Staff recommendation, a tree will be added to get canopy coverage over the parking lot, as will be reflected in a revised landscape plan to be filed. Additional ADA access from the proposed ADA parking spaces to the building will be addressed under both Phase I and Phase II. Under Phase I (Exhibit 27(a)), Petitioner designated ADA parking just east of the existing pool. There will be an ADA compliant path from those parking spaces to the new entrance that's going to be introduced as part of the renovation of the building on the south side of the existing structure.

Under Phase II, there will be ADA compliant parking to the south of both the existing building and proposed building addition. And there will be an ADA compliant path then to the main entrance, which is located at the southeast corner of the new building addition. As part of that compliant path, there will be an ADA curb ramp running from the parking lot to the sidewalk in front of the building. Thus Staff's recommended condition number 13 has been addressed by these plans. Tr. 112-113.

Mr. Smith described the where the parking will be located for Phase I and Phase II. Under Phase I, Petitioner will only be re-striping the parking lot. There will be designated parallel parking spaces along the east side of, Omaha Beach Drive, along the access drive. The main parking lot in the south end of the property will also be re-striped to introduce a parking

island in the center, parking along the south end of the site, adjacent to the pool area, and the ADA parking spaces. Under Phase II, the access drive coming in will be widened slightly to introduce head-in parking along the east side of the building. And the back parking lot will also be reconfigured to introduce the micro-bioretenention area in the center. That will also be expanded slightly to the south to add additional head-in parking along the south end of the property.

[According to Mr. Kline, the parking waiver is for both the parking area that straddled the property line and the leased area, and for the parking spaces adjacent to the outer limit of the leased area.] Tr. 113-116.

Mr. Smith further testified that sewer and water service will be adequate to handle the expanded facility in this location, with a new water service constructed under Phase I to meet the fire requirements. Otherwise there are adequate facilities. Tr. 119.

According to Mr. Smith, the amount of land disturbance will not encroach into the stream valley, and there will be no adverse impacts. In fact, there will be, as part of this project, an environmental benefit to Sligo Creek in that under the existing condition the existing paved parking lot goes completely untreated. Under the Phase II construction, where stormwater management is introduced, that parking lot, as well as the access drive and the new building addition, all of the disturbed area under the Phase II construction, will be treated and will provide benefit to Sligo Creek. The subject site is not in a special protection area or a primary management area. Tr. 119-120.

Mr. Smith testified that the project will meet all the development standards of the underlying zone and the special exception use and will not be detrimental to the use or development of surrounding properties. There will be no adverse impact on surrounding properties from the proposed use Tr. 120-121.

4. F. Thompson Wheeler (Tr. 121-144):

F. Thompson Wheeler testified as an expert in architecture. From an architectural standpoint, work in Phase I is going to be isolated largely to the interior of the building, with the exception of a new entrance to the north along Forest Glen Road, and then a modification to the entrance on the southeast corner of the building near the handicapped parking area. Phase II, looking at Exhibit 27(b), will entail a new two-story addition plus cellar to the south side of the building. Mr. Wheeler used perspectives and elevations in Exhibit 4 to describe the proposed building. The approach to the addition of the building is to make it compatible with the existing architecture. The existing building is brick masonry with a precast trim around the window openings and the door openings. So Petitioner will be treating the addition in the same way. Tr. 126-129.

The Phase III perspective rendering is identical to Phase II, with the exception that a second story addition will be added along the Omaha Beach Drive side of the building. And that addition is going to be consistent with the Phase II addition, metal and glass storefront for the windows, and then precast concrete panels at the wall surfaces. Those materials are compatible with the surrounding area. In the surrounding area, the houses are predominantly brick, but this is an institutional building, so the glass and metal are compatible with the existing building and with nearby Holy Cross Hospital, Tr. 130-131.

Mr. Wheeler discussed the issue of whether the height of the building is consistent with development standards. When the issue first came up, he tried to understand how the building could have been permitted back in the late fifties under the zoning code, which was basically consistent with what it is now. The height requirement in the zone is 35 feet. He first examined whether the terrace on which the building sits was sufficient to meet the Code requirements, but when he measured along Forest Glen Road, and took into account the terrace, the building height

measured about 44.4 feet, which didn't meet the zoning requirement at the time (or now). On documents relating to the transfer of the land from Park and Planning to the Boys and Girls Club at the time, Omaha Beach Drive (also known as Beattie Drive) was shown as what appeared to be a dedicated street. And it was cited in all of the legal descriptions of the property. When he did an analysis of the building height along Omaha Beach Drive for the existing building, he was able to determine that the way that's measured is at the mid-point of the elevation along that elevation. And in this case, because it's a curved roof, it can be measured to the mid-point of the slope of the roof, whether it's a gable or otherwise. Under that scenario, the existing building meets the requirement. That midpoint is slightly under 35 feet. So that was the likely scenario under which the existing building was permitted. Tr. 131-133.

As to future development, both in Phase II and Phase III, the elevation is longer along Omaha Beach Drive than it is currently, once Petitioner adds onto the side of the building. Doing the calculation, again, from the midpoint, the building will still be within the 35 foot height requirement that the Zoning Code sets out. Mr. Wheeler's professional conclusion is that the existing and proposed additions to the building will meet the height requirements of the Zoning Ordinance. Tr. 133.

[Mr. Kline provided a letter he prepared and submitted to DPS, and it was countersigned by Mr. Niblock of DPS, which provides the history that Mr. Wheeler testified to. Exhibit 31. The Department indicated in a closing certification, that in the future it will treat Beattie Drive or Omaha Beach Drive, whichever it is called, as a public street for purposes of calculating the height of this building on this property, although it has never actually been dedicated. Mr. Kline also noted that though the building is addressed on Forest Glen Road, the functioning front of the building has always been Beattie Drive. It does not make a difference where the door is; rather the height is measured from the front of the building. A corner lot has two fronts, and the



Department of Permitting Services is going to treat it as a corner lot because of the history of Omaha Beach Drive. If this site is treated as a corner lot, the average grade as measured to the mid-point of the roof meets the 35-foot height requirement on the Omaha Drive side. ] Tr. 134-138. Mr. Wheeler adopted Mr. Kline's statement as part of his testimony. Tr. 138.

Mr. Wheeler described the proposed lighting fixtures. Petitioner is proposing to install a building mounted light at the southeast corner of the building that will illuminate the stairs at that location in Phase I. In Phase II, the pool will come out, the stair will come out, and there will be other lighting that will address that area. The photometric plan covers the end state. Tr. 139-141.

In Mr. Wheeler's opinion, the building will be in harmony with the surrounding character, from a design perspective, of the surrounding neighborhood. One often sees institutional buildings in these residential contexts. While they are different, they can be made compatible through the use of materials, controlling height, and things like that. The primary entrance for the kids entering and exiting the school will be on the southeast corner, near the pool. Petitioner will be creating a new entrance facing Forest Glen, and that will mainly serve kids coming in and out of the school and going down to the play field. Currently, there are doors facing the playing field, but those are classroom doors. Petitioner needs a new entrance to be able to get the kids in and out of the building conveniently, which will be the one on Forest Glen. In Phases II and III, the doors will remain to get playing field access, but the main entrance of the school will remain at that southeast corner, on the parking lot side and away from Forest Glen. Tr. 141-144.

## **B. Community Participants**

### **1. Margot Cook (Tr. 19-25):**

Margot Cook testified that she lives at 1603 Myrtle Road, which is parallel to Forest Glen Road, and almost opposite Holy Cross Hospital. Ms. Cook is the past president of the Forest

Grove Citizens' Association (FGCA). She stated that there have been changes in the neighborhood, but the Boys and Girls Club always has had a good reputation, and "from our meetings with and observation of the members of Siena School, they have been very positive." Tr. 22. The children use Getty Park and seem well behaved. Ms. Cook was also very impressed with presentations given by the students, and having been a teacher herself, with the kinds of things the school seems to be achieving with the students.

Ms. Cook noted that there is a lot of need for the services provided by the Siena School. While some of these children do not have extreme problems, they deserve a good solid education which the school seems to provide. She is in favor of the special exception. "We're kind of all real happy with this situation, as compared to other ones that we've come across." Tr. 25.

2. J. David Meininger (Tr. 25-32):

J. David Meininger testified that his neighborhood is "South Four Corners," which is bounded by Forest Glen Road, Penbrook, Dennis Avenue, and University Boulevard. He resides at Greenock Road, but he passes by the Boys and Girls Club on a daily basis using Forest Glen Road. Mr. Meininger is the elected president of the South Four Corners Civic Association (SFCCA), but he is testifying only as an individual.

Mr. Meininger was impressed that Mr. Kaufman reached out to his civic association, the South Four Corners Civic Association, early in 2011, and made them aware of the school's plan, and has had subsequent meetings with the civic association at its meetings.

The issues for his neighborhood concerning the Boys and Girls Club have been the nighttime events which have required parking beyond the current parking lot's capability. That parking has overflowed into the neighborhood bordered by Forest Glen and Penbrook. According to Mr. Meininger, some people attending these nighttime events are not considerate of the neighbor's ability to get in and out of their parking lots. There has also been public urination, as

well as an accumulation of trash. This has required, several times, involving the Montgomery County Police to make things more orderly. Tr. 26-27.

It is Mr. Meininger's understanding from the meetings with Mr. Kaufman, that in the event of nighttime activity, there will be none of the cars associated with that activity being parked in the community. He was pleased to hear that Mr. Kaufman has made an arrangement with the Maryland National Capital Park and Planning Commission to use the parking lot of the Margaret Schweinhaut Senior Citizen facility, and possibly Argyle Park. He has made a definitive statement that none of the cars from School events will park in the neighborhood. Mr. Meininger finds that encouraging, and "we will hold him to that expectation that he has set." Tr. 27.

Mr. Meininger testified that Forest Glen Road is a busy thoroughfare in both directions, to and away from Sligo Creek Park, which is the intersection that allows people to go to and from the Boys and Girls Club. There is a procession of moms and dads, and there are Montgomery County school buses coming and going, both at the beginning and the ending of school. He is encouraged, also, that Mr. Kaufman has a parking plan that would include the use of the Ride-On bus from Forest Glen Metro station, the ability of the students to walk about three-quarters of a mile further than where they are currently housed at the church at the intersection of Forest Glen and Georgia Avenue. They also have a van pooling process, and their car pooling expectation is that their queuing of cars coming and going will not impede the traffic on Forest Glen. Mr. Meininger is also in favor of the planned re-lining of the existing parking lot to incorporate more parking spaces. His hope is that on days of poor weather, the school will use their shuttle bus to move back and forth those who will be attending the nighttime activities at the Siena School, back-to-school night, et cetera. Tr. 27-28.

Mr. Meininger further testified that he is amenable to the possibility of an enrollment of 225 students and the 55 staff. He feels that “the Siena School will be a preferred neighbor.” Tr. 30. Based on the expectations that have been given the community by Clay Kaufman and the management team of the Siena School, he is in favor of the special exception. Mr. Meininger noted that although he is speaking for himself as an individual, he has “the ears of the community.” Tr. 30. The SFCCA has not taken a formal position, but their chief concerns relate to traffic and parking, and management of nighttime activity. Tr. 31.

[The Hearing Examiner suggested that Petitioner discuss the proposed TMP with Mr. Meininger before submitting it, and Petitioner’s attorney agreed to do so.] Tr. 31-32.

#### **IV. FINDINGS AND CONCLUSIONS**

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Technical Staff and the Planning Board concluded that Petitioner will have satisfied all the requirements to obtain the special exception, if it complies with the recommended conditions. Exhibits 17 and 19(a).

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Code §59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as Petitioner complies with the conditions set forth in Part V, below.

### **A. Standard for Evaluation**

The standard for evaluation prescribed in Zoning Ordinance § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” § 59-G-1.2.1. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a private educational institution use. Characteristics of the proposed use that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed use that are not consistent with the characteristics thus identified, or adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects thus identified must be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

In this case, the Technical Staff suggested the following inherent characteristics associated with the use (Exhibit 17, p. 8):

- (1) buildings and structures, as well as outdoor areas for the children to play;
- (2) early and long hours of operation;
- (3) traffic to and from the site by the staff and parents;

- (4) deliveries of supplies and trash pick-up;
- (5) drop-off and pick-up areas for the students; and
- (6) noise from the children playing in the play areas.

To this list, the Hearing Examiner would add the following inherent characteristics:

- (7) students, faculty and support staff;
- (8) lighting;
- (9) parking facilities; and
- (10) occasional special events.

Most of the characteristics of the proposed special exception are inherent in the operation of a private educational institution. The proposed access driveway, internal vehicular circulation system, play areas, lighting and onsite parking areas shown on the site plan are physical characteristics typically associated with a private school. The number of staff and students, the hours and proposed manner of operation, and the intended special events are also typical operational characteristics of a private school.

Technical Staff indicated that it had identified only one non-inherent characteristic – that the Siena School, for a number of years, will share the existing building with the Boys and Girls Club, which has its own private club special exception (CBA-230 and CBA-541). Staff notes that the use of the Club has declined in recent years, and the activities which have been previously approved by the Board of Appeals will essentially be absorbed as accessory uses to the Siena School because some functions for both uses overlap (*e.g.*, summer camp and before- and after-care programs). Exhibit 17, p. 8. Moreover, the combined impacts of the two uses will be mitigated by a number of factors enumerated by Staff (Exhibit 17, p. 8):

Arrivals and departures will be staggered between uses. As provided in the application, the before-care students of the Boys and Girls Club will arrive at 7:30 A.M. and leave by bus at 8:30 A.M. About 20 students are enrolled in this before-care program. Siena School does not have a before-care program and students arrive in various modes of transportation (bus, carpool, Metro/walk, etc.) between 8:00 A.M. and 8:20 A.M. In the afternoon, after-care for the Boys and Girls Club begins around 2:50, with the arrival of students from the local schools,

by bus. Siena School after-school activities begin around 3:30 P.M., with approximately 26% of students participating in the programs.

The Boys and Girls Club is a temporary use that will discontinue at this site after eight years after the Siena School receives title to the Boy's and Girl's property. The Siena School does not propose to increase their programming or enrollment until after the Boys and Girls Club departs. For Phase I, the overall anticipated number of students on-site at any one time is within previous approvals of the private club special exception. . . .

Based on their evaluation of "the cumulative effects that both uses would have with regards to traffic, safety, environment and operations," Technical Staff concluded that "this non-inherent effect would not cause an inordinate inconvenience or nuisance in the neighborhood. The uses provided by the Boys and Girls Club will complement the proposed private school use." Exhibit 17, pp. 8-9.

Although the Hearing Examiner is a less sanguine about the ability of these uses to be seamlessly coordinated, the evidence in the record supports Staff's conclusion that it can be done without disrupting the neighborhood. Nevertheless, to ensure that this juggling act works as planned, the Hearing Examiner has recommended the following condition in Part V of this report:

The Board will retain jurisdiction for two years after Siena School's operations commence on the site to ensure that the Siena School's activities, in combination with other activities at the site, are not having an unduly adverse effect on the surrounding neighborhood due to traffic, noise, lighting, parking, or the intensity, frequency, or duration of activities. After the first year of operations, Petitioner must have a traffic and parking study done to determine the impacts of the total cumulative number of car trips and parking generated by the regular academic program, the Boys and Girls Club activities, the before and after-school programs and the summer programs, whether or not the traffic exceeds the capacity of the roads. [*i.e.*, the standard contained in Zoning Ordinance §59-G-2.19(b).] The results of the traffic study must be shared with Technical Staff and NCA, FGCA and SFCCA. It must also be filed with the Board of Appeals. The Board will thereafter schedule a work session to determine whether additional conditions are needed to protect the community.

The Hearing Examiner finds that there is one other non-inherent characteristic of the site—the fact that the existing building does not conform to the height restrictions of the Zoning Ordinance. This issue was discussed at some length in Part II.D.3. of this report, and the Hearing

Examiner found that the building, as Petitioner proposes to modify it to complete this special exception, will be consistent with the Zoning Ordinance's development standards, as they are interpreted by the agency charged with enforcing them. The Hearing Examiner also recommends a condition specifying that future construction is subject to review by DPS officials as to compliance with the applicable development standards. Petitioner must file with the Board of Appeals a valid permit (or permits) issued by DPS for any future construction on the site, and ultimately Petitioner's construction must bring the building within the applicable development standards. With these caveats, the Hearing Examiner concludes that the requested use, if properly conditioned, will have no significant adverse effects, inherent or non-inherent, on the surrounding area, and that denial of the petition is therefore not warranted.

### **B. General Standards**

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the Petitioner's documentary evidence and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

#### **Sec. 59-G-1.21. General conditions:**

(a) *A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) *Is a permissible special exception in the zone.*

Conclusion: Private educational institutions are permitted by special exception in the R-60 Zone pursuant to Zoning Ordinance §59-C-1.31(d).

(2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*



Conclusion: The proposed use would comply with the standards and requirements set forth for in Zoning Ordinance §59-G-2.19, as detailed in Part IV. C. of this report.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: The subject site is located in the area covered by the 1986 Four Corners Sector Plan. As discussed in Part II. C. of this report, Technical Staff found that although the Sector Plan contains no specific recommendations for the site, “the proposed use will be consistent with the overall goal of the Sector Plan.” Exhibit 17, p. 9. The current use, the Boys and Girls Club, is mentioned on Page 63 of the Sector Plan as providing “[a]dditional recreation and community services” within the Four Corners neighborhood. The Hearing Examiner agrees that the relocation of the Siena School in conjunction with the activities of the Boys and Girls Club would be consistent with the goals and objectives of the 1986 Four Corners Sector Plan. Moreover, the Sector Plan does not recommend rezoning the area, and the existing R-60 Zone permits the proposed use as a special exception. Based on this record, the Hearing Examiner concludes that the application is consistent with the objectives of the Sector Plan.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

Conclusion: Technical Staff concluded that the special exception application will be in harmony with the general character of the neighborhood. Exhibit 17, p. 10. Staff noted that renovations to the existing building will be minimal and the proposed additions and changes to the façade will be similar to the existing structure. According to Staff, the proposed use, in addition to the existing Boys and Girls Club, will increase the intensity of the activity only slightly, primarily during the morning and evening hours. Staff adds that the design, scale and bulk of the proposed addition are also in harmony with the surrounding neighborhood, and the new building materials will be similar to existing materials as well.

While the Hearing Examiner believes that the addition of the school to the building will increase activity more than “slightly,” as suggested by Staff, the site is surrounded by park on three of the four sides, and is well screened from the community. Therefore, any impacts on the neighborhood from this added on-site activity will be ameliorated. Moreover, analyses of future transportation and traffic conditions show that the new trips generated by the proposed use are not likely to have a significant impact on the residential neighborhood or the roads. Adequate off-street parking spaces will be provided to satisfy the school’s parking needs, and the Hearing Examiner recommends that the number of staff permitted on site be limited by the number of parking spaces available.

Based on this record, the Hearing Examiner agrees with Technical Staff’s conclusion that the special exception will be in harmony with the general character of the neighborhood.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general*

*neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: For the reasons set forth in the previous answer and in Part II. D. of this report, the evidence supports the conclusion that, with the specified operational limitations and other conditions, the requested new use would not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Technical Staff found that the proposed use will not cause any unacceptable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site. Exhibit 17, pp. 10-11. Some noise and physical activity from children is an inherent characteristic of this special exception. However, the use will be adequately screened from the views of neighboring properties. For safety reasons, the proposed lighting will exceed 0.1 foot-candles along the rear and side property lines, as discussed in Part II.D.4. of this report. Given Staff's finding that the lighting level will not substantially intrude onto residential properties, and the need for institutional safety, the Hearing Examiner recommends that the standard be relaxed by the Board, as is permitted in Zoning Ordinance §59-G-1.23(h). There is no evidence that the proposed uses will create any unacceptable vibrations, fumes, odors or dust. Based on this record, the Hearing Examiner finds that the proposed use will not cause any unacceptable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: Technical Staff reports that there are 43 special exceptions applications on 31 different properties within the staff-defined neighborhood, including this site. While this is a large number, the defined neighborhood is also quite large, and Staff points out that the addition of this private educational institute will result in fewer than 1% of properties containing a special exception use within the defined neighborhood. Exhibit 17, p. 11. Therefore, the proposed special exception will not result in an excessive concentration of special exception uses in general or private educational institutions in particular, and will not adversely affect the area or alter its residential character. Moreover, by definition, “*Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*” As previously stated, the proposed use is consistent with the recommendations of the applicable Sector Plan.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence summarized above supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site. Rather, it will continue to provide a valuable service to the community by offering quality education to the children of the area.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*
- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*
- (B) *If the special exception:*
- (i) does not require approval of a new preliminary plan of subdivision; and*
  - (ii) the determination of adequate public facilities for the site is not currently valid for an impact that is the same as or greater than the special exception's impact;*
- then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.*

Conclusion: As determined by Technical Staff (Exhibit 17, p. 12), the special exception sought in this case would not require approval of a preliminary plan of subdivision, and there is no currently valid determination of the adequacy of public facilities for the site, taking into account the impact of the proposed special exception. Therefore, the Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the applicable Growth Policy standards. These standards include Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR). The Hearing Examiner finds that the evidence supports the conclusion that the subject property would continue to be served by adequate public facilities, as discussed in Part II. D. 8. of this report.

- (C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: Mr. Hedberg opined that the proposed operation will be safe and adequate for vehicular and pedestrian circulation. Tr. 90-93. Technical Staff agreed with this conclusion, stating, “The proposal will not reduce the safety of vehicular or pedestrian traffic.” Exhibit 17, p. 12. Based on the evidence in this record, as discussed in Part II. D. 8. of this report, the Hearing Examiner concludes that the proposed use, as conditioned, would not reduce the safety of pedestrian or vehicular traffic.

### **C. Specific Standards: Educational Institutions, Private**

The specific standards for a private educational institution are found in Code § 59-G-2.19. The Technical Staff report and the Petitioner’s written evidence and testimony provide sufficient evidence that the proposed use would be consistent with these specific standards, as outlined below.

#### **Sec. 59-G-2.19. Educational institutions, private.**

- (a) *Generally. A lot, tract or parcel of land may be allowed to be used for a private educational institution if the board finds that:*

*(1) the private educational institutional use will not constitute a nuisance because of traffic, number of students, noise, type of physical activity, or any other element which is incompatible with the environment and character of the surrounding neighborhood;*

Conclusion: For the reasons set forth in the General Standards section above and in Parts II. D. and E. of this report, as long as appropriate conditions are imposed, the uses will not constitute a nuisance because of traffic, number of students, noise, type of physical activity or any other element, and they will be compatible with the environment and character of the area.

(2) *except for buildings and additions completed, or for which a building permit has been obtained before (date of adoption [April 2, 2002]), the private educational institution must be in a building architecturally compatible with other buildings in the surrounding neighborhood, and, if the private educational institution will be located on a lot, tract, or parcel of land of 2 acres or less, in either an undeveloped area or an area substantially developed with single-family homes, the exterior architecture of the building must be similar to a single-family home design, and at least comparable to any existing homes in the immediate neighborhood;*

Conclusion: The current building has been in existence since the 1950s, and the proposed building additions will be in the back of the building. As discussed in Part II. D. 2. of this report, Petitioner's architect, F. Thompson Wheeler, testified that his approach to the proposed additions to the buildings is to make them compatible with the existing architecture. The existing building is brick masonry, with a precast trim around the window openings and the door openings. Mr. Wheeler testified that those materials are compatible with the surrounding area, which includes nearby Holy Cross Hospital. Tr. 126-131. In Mr. Wheeler's opinion, the building will be in harmony with the character, from a design perspective, of the surrounding neighborhood. Tr. 141-144. Technical Staff agreed. Exhibit 17, p. 16. Based on this record, the Hearing Examiner finds that the requirements of this section are met.

(3) *the private educational institution will not, in and of itself or in combination with other existing uses, affect adversely or change the present character or future development of the surrounding residential community; and*

Conclusion: For the reasons set forth in the General Standards section above, and in response to Sections 59-G-2.19(a) (1) and (2), immediately above, the Hearing Examiner finds that the use will not adversely affect or change the present character or future development of the surrounding neighborhood.

*(4) the private educational institution must conform with the following standards in addition to the general development standards as specified in Section G-1.23:*

- a. Density—The allowable number of pupils per acre permitted to occupy the premises at any one time must be specified by the Board considering the following factors:*
  - 1. Traffic patterns, including:*
    - a) Impact of increased traffic on residential streets;*
    - b) Proximity to arterial roads and major highways;*
    - c) Provision of measures for Transportation Demand Management as defined in Section 42A-21 of the Montgomery County Code;*
    - d) Adequacy of drop-off and pick-up areas for all programs and events, including on-site stacking space and traffic control to effectively deter queues of waiting vehicles from spilling over onto adjacent streets; and*
  - 2. Noise or type of physical activity;*
  - 3. Character, percentage, and density of existing development and zoning in the community;*
  - 4. Topography of the land to be used for the special exception; and*
  - 5. Density greater than 87 pupils per acre may be permitted only if the Board finds that (i) the program of instruction, special characteristics of students, or other circumstances justify reduced space and facility requirements; (ii) the additional density will not adversely affect adjacent properties; (iii) additional traffic generated by the additional density will not adversely affect the surrounding streets.*

Conclusion: Compliance with the general development standards specified Code Section 59-G-1.23 will be discussed in Part IV. C. of this report, below. The traffic situation and the other topics in this section (except student density) were discussed at length in Part II. D. of this report. As to student density, with the recommended conditions, Petitioner would have up to a maximum of 225 students on site. That represents roughly 83.3 students per acre ( $225 / 2.7 = 83.3$ ), which is less than the maximum permitted density of 87 student per acre. However, to the extent that children



from the Boys and Girls Club are present, there may be times when the density is briefly exceeded, prior to the Boys and Girls Club children being transported to their schools or homes. As explained elsewhere in this report, these exceedances should not adversely impact the functioning of the Siena School, adjacent properties or traffic on surrounding streets. Tr. 72. The Hearing Examiner therefore finds that the brief periods of such student density exceedances should be permitted.

Technical Staff noted that the proposed addition will be located towards the back of the site, surrounded by recreational areas on three sides, and the athletic field is located towards Sligo Creek Parkway, which is away from the residential homes along Forest Glen Road. “Based on traffic levels, noise considerations, community character, site topography, and other factors, the maximum number of students proposed is a reasonable number to occupy the premises at any one time.” Exhibit 17, pp. 17-18.

Thus, the record demonstrates that Petitioner would meet the standards set forth in this section, with the conditions recommended in Part V of this report.

- b. *Buffer—All outdoor sports and recreation facilities must be located, landscaped or otherwise buffered so that the activities associated with the facilities will not constitute an intrusion into adjacent residential properties. The facility must be designed and sited to protect adjacent properties from noise, spill light, stray balls and other objectionable impacts by providing appropriate screening measures, such as sufficient setbacks, evergreen landscaping, solid fences and walls.*

Conclusion: As stated by Technical Staff (Exhibit 17, p. 18),

There are no new outdoor sports and recreation facilities proposed with this application. The play areas already exist on the Sligo Creek Parkway side of the campus. The applicant has secured an agreement from the Department of Parks to use the adjacent park property as play

fields. There are no houses immediately adjacent to the recreational area, rather a continuation of a stream valley park. The park area is surrounded by tall, mature trees. There are no lights associated with the field, nor any proposed. Staff finds that there is appropriate screening is used to buffer the sports and recreation facilities.

Based on this record, the Hearing Examiner finds that the proposed use is compliant with this section.

- (b) *If a Private Educational Institution operates or allows its facilities by lease or other arrangement to be used for: (i) tutoring and college entrance exam preparatory courses, (ii) art education programs, (iii) artistic performances, (iv) indoor and outdoor recreation programs, or (v) summer day camps, the Board must find, in addition to the other required findings for the grant of a Private Education Institution special exception, that the activities in combination with other activities of the institution, will not have an adverse effect on the surrounding neighborhood due to traffic, noise, lighting, or parking, or the intensity, frequency, or duration of activities. In evaluating traffic impacts on the community, the Board must take into consideration the total cumulative number of expected car trips generated by the regular academic program and the after school or summer programs, whether or not the traffic exceeds the capacity of the road. A transportation management plan that identifies measures for reducing demand for road capacity must be approved by the Board.*

*The Board may limit the number of participants and frequency of events authorized in this section.*

Conclusion: Petitioner proposes to operate summer sessions under the same hours of operations, enrollment caps, staffing and procedures as during the school year (although actual summer enrollment may be lower than during the school year). Petitioner's methodology for managing traffic and any overflow parking for special events listed in its Second Amended Statement of Operations (Exhibit 40(a)) is specified in its TMP (Exhibit 36(a)).

The Boys and Girls Club may continue its activities in the building on a "lease-back" for up to eight years after Siena School receives title to the property.

Petitioner is proposing ultimately to absorb these activities into its own special exception use. Technical Staff states (Exhibit 17, pp. 18-19):

The activities associated with the Boys and Girls Club are not anticipated to have an adverse effect on the surrounding neighborhood. The cumulative effect of both uses will not generate an inordinate amount of trips, as both uses are staggered in arrival and departure times, as well as from operational (begin and end) times. The number of summer camp students will be minimal and Siena School is not proposing to expand their student enrollment or programs until after the Boys and Girls Club ceases its operation. Additionally, 50% of the Siena School students arrive via carpool or public transportation.

Based on Staff's analysis and the evidence discussed in Part II of this report, the Hearing Examiner concludes that the proposed special exception at this location, as conditioned, is not likely to create the adverse effects listed in this section.

However, as mentioned in Part IV.A. of this report, the Hearing Examiner is recommending a condition which would allow the Board to review the situation after a year of operations by the Siena School.

(c) *Programs Existing before April 22, 2002.*

(1) *Where previously approved by the Board, a private educational institution may continue the operation of (i) tutoring and college entrance exam preparatory courses, (ii) art education programs, (iii) artistic performances, (iv) indoor and outdoor recreation programs, or (v) summer day camps, whether such programs include students or non-students of the school, if the number of participants and frequency of events for programs authorized in 59-G-2.19(b) are established in the Board's approval.*

(2) *Where not previously approved by the Board, such programs may continue until April 22, 2004. Before April 22, 2004, the underlying special exception must be modified to operate such programs, whether such programs include students or non-students of the school. The Board may establish a limit on the number of participants and frequency of events for authorized programs.*

Conclusion: As previously stated, programs conducted in the existing building by the Boys and Girls Club will remain for up to eight years, and will gradually be absorbed by the

Siena School. For the reasons discussed above, the Board's approval should continue to allow these activities according to the stated time-table.

(d) *Site plan.*

(1) *In addition to submitting such other information as may be required, an applicant shall submit with his application a site plan of proposed development. Such plan shall show the size and shape of the subject property, the location thereon of all buildings and structures, the area devoted to parking and recreation facilities, all access roads and drives, the topography and existing major vegetation features, the proposed grading, landscaping and screening plans and such other features necessary for the evaluation of the plan.*

(2) *No special exception, building permit or certificate of occupancy shall be granted or issued except in accordance with a site plan of development approved by the board. In reviewing a proposed site plan of development the board may condition its approval thereof on such amendments to the plan as shall be determined necessary by the board to assure a compatible development which will have no adverse effect on the surrounding community, and which will meet all requirements of this chapter. Any departure from a site plan of development as finally approved by the board shall be cause for revocation of the special exception, building permit or certificate of occupancy, in the manner provided by law.*

Conclusion: Appropriate plans (NRI/FSD, Site Plan, Landscaping and Lighting Plan, Statement of Operations, Transportation Management Plan and Parking and Queuing Plans) have been submitted by Petitioner and are binding on it unless modified by the Board of Appeals.

(e) *Exemptions. The requirements of Section G-2.19 do not apply to the use of any lot, lots or tract of land for any private educational institution, or parochial school, which is located in a building or on premises owned or leased by any church or religious organization, the government of the United States, the State of Maryland or any agency thereof, Montgomery County or any incorporated village or town within Montgomery County. This exemption does not apply to any private educational institution which received approval by the Board of Appeals to operate a private educational institution special exception in a building or on a lot, lots or tract of land that was not owned or leased by any church or religious organization at the time the Board of Appeal's decision was issued.*

Conclusion: This subsection is not applicable to the lot on which the building is located. It is owned by the Boys and Girls Club of Greater Washington, Inc., and Petitioner is the contract purchaser of that land (Exhibit 9(a)). The land surrounding the building lot on three sides is owned by M-NCPPC, but a special exception is required because the school's operations will be conducted largely in the building located on the private property portion of the site. Some school activities (*e.g.* parking, pickup and drop-off of students, and student outdoor play) will take place, in part, on land owned by M-NCPPC and leased to Petitioner (Exhibit 9(b)); however, neither Technical Staff nor the Planning Board suggested that this provision should prohibit the imposition of conditions on the special exception which will protect the neighborhood, even though those conditions will govern activities on land owned by M-NCPPC and leased to Petitioner. The Hearing Examiner concludes that, in the absence of an objection from M-NCPPC, the Board of Appeals may impose conditions to limit impacts from the special exception, some of which will govern Petitioner's activities on the land leased from M-NCPPC.

- (f) *Nonconforming uses. Nothing in this chapter shall prevent any existing private educational institution which obtained a special exception prior to the effective date of this chapter, from continuing its use to the full extent authorized under the resolution granting the respective special exception, subject, however, to division 59-G-4 of this chapter.*

Conclusion: This subsection is not applicable.

- (g) *Public Buildings.* \* \* \*

Conclusion: This subsection is not applicable.

- (h) *Applications filed before May 6, 2002. Any application filed before May 6, 2002 for a private educational institution special exception or modification of a private educational institutional special exception must comply with the*

*requirements of Article 59-G and Article 59-E in effect at the time the special exception was filed.*

Conclusion: This subsection is not applicable.

#### **D. Other Applicable Standards**

##### **Section 59-G-1.23. General development standards.**

*(a) Development Standards. Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.*

Conclusion: The following chart from the Technical Staff Report (Exhibit 17, pp. 12-13), demonstrates compliance with all applicable development standards when the additions proposed for the building have been completed:

**Table 3: Applicable Development Standards – R-60 Zone (Phase III, buildout scenario)**

Development Standards – R-60	Requirement	Provided
Maximum Building Height	2.5 stories or 35 ft. (mean height on a roof, other than a flat roof)	±44 ft. (top of curve) ±35 ft. (mean)
Minimum Lot Area	6,000 sq. ft.	±56,628 sq. ft.
Minimum Width at Front Building Line	60 ft.	±300 ft.
Minimum Width at Proposed Street Line	25 ft.	±300 ft.
Minimum Front Yard Setback	25 ft.	±34 ft.
Minimum Side Yard Setback	8 ft. one side, 18 ft. sum of both sides	±24 ft. right side, 181 ft. sum of both sides
Minimum Rear Yard Setback	20 ft.	±21 ft.
Maximum Building Coverage	35%	28%

As discussed in Part II.D.3. of this report, the existing height of the building is not compliant with the Zoning Ordinance, but based on the evidence of record, the building will be compliant once the proposed additions have been completed. Staff found “that

the proposed special exception meets the required development standards of the zone.” Exhibit 17, p. 12. With the caveat regarding height, spelled out in Part II.D.3. of this report, the Hearing Examiner agrees.

*(b) Parking requirements. Special exceptions are subject to all relevant requirements of Article 59-E.*

Conclusion: As discussed in Par II. D. 7 of this report, if the recommended conditioned are imposed and the recommended parking waivers are granted, Petitioner will be in compliance with all applicable parking standards.

*(c) Minimum frontage \* \* \**

Conclusion: Not applicable, since none of the listed uses are involved and no waiver regarding frontage is being sought.

*(d) Forest conservation. If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.*

Conclusion: As discussed in Part II. E. of this report, this property is subject to Chapter 22A of the Montgomery County Code (*i.e.*, the Forest Conservation Law); however, Technical Staff granted an exemption from the requirements of submitting a Forest Conservation Plan (#42012011E), approved on July 25, 2011. Exhibit 6(c).

*(e) Water quality plan. If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.*

Conclusion: Water Quality Plans are used in special protection areas (SPAs), as specified in Zoning Ordinance §59-A-2.1. Since the subject site is not in an SPA, this provision is inapplicable to this case. Exhibit 17, p. 15.

(f) *Signs. The display of a sign must comply with Article 59-F.*

Conclusion: As discussed in Part II.D. 5. of this report, Petitioner seeks to erect a ground-mounted entry sign and two wall signs, for which a permits and possible sign variances will be required. A condition has been recommended in Part V of this report to assure compliance with Article 59-F.

(g) *Building compatibility in residential zones. Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.*

Conclusion: As stated by Technical Staff (Exhibit 17, p. 15):

The proposed construction appears to be well related to the surrounding area in its siting, landscaping, and appearance and satisfies this standard.

The issue of compatibility was discussed in Part II.D.2. this report and in the sections addressing Zoning Ordinance §§59-G-1.21(a)(4) and 2.19(a)(2). Based on this record, the Hearing Examiner finds that the proposed additions will be compatible with the neighborhood.

(h) *Lighting in residential zones. All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:*

(1) *Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.*

(2) *Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.*



Conclusion: Petitioner is proposing lighting mounted on a 16-foot high poles with a full cutoff. As discussed in Part II. D. 4. of this report, the proposed lighting levels along the side and rear lot lines will exceed the 0.1 foot-candle standard. Staff notes, however, “that the rear and side areas of the special exception abut I-495 and parkland, respectively, and the lighting level will not substantially intrude onto residential properties.” Exhibit 17, p. 15. Given Staff’s finding that the lighting level will not substantially intrude onto residential properties, and the need for institutional safety, the Hearing Examiner recommends that the standard be relaxed by the Board, as is permitted in Zoning Ordinance §59-G-1.23(h). Based on this record, the Hearing Examiner finds that the proposed use will not cause any unacceptable illumination or glare at the subject site.

**Section 59-G-1.26. Exterior appearance in residential zones.**

*A structure to be constructed, reconstructed or altered pursuant to a special exception in a residential zone must, whenever practicable, have the exterior appearance of a residential building of the type otherwise permitted and must have suitable landscaping, streetscaping, pedestrian circulation and screening consisting of planting or fencing whenever deemed necessary and to the extent required by the Board, the Hearing Examiner or the District Council. Noise mitigation measures must be provided as necessary.*

Conclusion: As discussed, the proposed additions to the building will be compatible with the neighborhood and will be suitably screened. Appropriate circulation will also be provided. The Hearing Examiner finds that the this provision will be met.

Based on the testimony and evidence of record, I conclude that, with the recommended conditions and waivers, the plans proposed by Petitioner meet the specific and general requirements for the proposed uses, and that the Petition should be granted, with the conditions recommended in the final section of this report.

## V. RECOMMENDATIONS

Accordingly, based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that the Petition of Siena Learning, LLC, d/b/a The Siena School, BOA No. S-2822, which seeks to obtain a private educational institution special exception, on property located at located at 1300 Forest Glen Road, Silver Spring, Maryland, be **granted** with the following conditions:<sup>13</sup>

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in this report.
2. Petitioner must comply with the terms of its revised Site Plan (Exhibit 33(c) for Phase I and Exhibit 43(a) for Phases II and III); its revised Landscape and Lighting Plan (Exhibits 33(d)(i) and (ii)); its revised Transportation Management Plan –TMP (Exhibit 36(a)); its Second Amended Statement of Operations (Exhibit 40(a)); and the Stormwater Management Plan ultimately approved by the Department of Permitting Services. Physical improvements are limited to those shown on the revised site and landscape plans.
3. Up to eight large-scale events and activities that are inherent in the operation of a private educational institution are permitted in an academic year. These events are described in the Second Amended Statement of Operations (Exhibit 40(a)). Petitioner must finalize an agreement with Montgomery County Parks to permit overflow parking at the Argyle Park-Schweinhaut Senior Center for these large-scale events, as indicated in Exhibit 24, and in the TMP (Exhibit 36(a)).
4. Academic school year operations are limited to no more than 225 students and 55 staff (excluding volunteers, visiting coaches and parents) in grades 4 to 12. At no time shall the Petitioner admit a greater number of students than it is able to appropriately manage with the facilities, faculty and staff available at the time. Petitioner must provide one on-site parking space for each staff member, unless it demonstrates to the Board's satisfaction in an administrative modification request that a lesser number of spaces will suffice. The following caps are imposed on the number of Siena students and staff on site at any given time:  
 Phase I 110 students & 20 Staff  
 Phase II 225 students & 55 Staff (or the number of staff parking spaces, whichever is less)  
 Phase III 225 students & 55 Staff (or the number of staff parking spaces, whichever is less)  
 The same caps shall apply to summer school.

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<sup>13</sup> Conditions 7, 12, 13 and 15, as recommended by Technical Staff, have been omitted because Petitioner has included the elements specified therein (*i.e.*, additional lighting and shading, ADA access and a TMP) in its revised plans, which are binding.

5. A summer program may be conducted for no more than 10 weeks. School operations may include summer day camps, including after-care and recreational activities, community accessible education, indoor/outdoor recreation, academic programs, drama and art classes, and facility rentals. The summer program is limited to 225 children and 55 staff. At no time shall the Petitioner admit a greater number of students than it is able to appropriately manage with the facilities, faculty and staff available at the time.
6. Hours of operation for any on-site activity will be from 7:30 a.m. until 6:00 p.m., Monday through Friday, except for special events when the facility can stay open as late as 9:00 p.m., and Saturday, 8:00 a.m. until 5:00 p.m.
7. The 0.1 foot-candle standard specified in Zoning Ordinance §59-G-1.23(h) is hereby waived for this site in the interests of public safety, as long as Petitioner complies with its revised Landscape and Lighting Plan (Exhibits 33(d)(i) and (ii)).
8. Pursuant to Zoning Ordinance §59-E-4.5, a waiver is hereby granted from the setback requirements of Zoning Ordinance §59-E-2.83 for the parking areas along the east side of the property, to the extent necessary to allow parking as depicted in the revised Site Plans (Exhibit 33(c) for Phase I and Exhibit 43(a) for Phases II and III).
9. No vehicles destined for the school are allowed to be queued off-site and onto adjacent streets during the morning drop-off and afternoon pick-up periods. On-street parking in the vicinity of the site in connection with the Siena School use is prohibited.
10. Petitioner must denote “staff-only” parking along the proposed parallel parking on the drive access and in the drop-off loop, closest to the Phase II building addition.
11. Petitioner must satisfy the Policy Area Mobility Review (PAMR) by paying a total of \$163,800 to the Montgomery County Department of Transportation (MCDOT). Any payment schedule must be made consistent with the issuance of all building permits relating to the physical improvements described as Phases I, II and III in the revised site plans. If a partial payment agreement is not established, then the full amount is due at the time of initial building permits.
12. A sign permit must be obtained for the proposed monument and wall signs (Exhibits 44(a) and (b)), and a copy of the permit for the approved signs must be submitted to the Board of Appeals before the signs are posted. If required by the Department of Permitting Services, Petitioner must obtain a sign variance for the proposed signs or amend the design of the proposed signs to have them conform with all applicable regulations. If the design is amended, a diagram showing the amended design must be filed with the Board.
13. Petitioner must provide three inverted-U bike racks near the main entrance in a well-lit and weather-protected area.
14. Petitioner must comply with all Maryland State and Montgomery County licensure requirements and standards for the operation of a private educational institution.

15. All children must be under the direct supervision of a staff member at all times, both inside and outside the building. Outdoor play may not begin before 8:30 a.m. No amplified music may be played by Petitioner outside the building.
16. The Petitioner shall maintain the grounds in a clean condition, free from debris, on a daily basis.
17. Plans for future construction are subject to review by DPS officials to ensure compliance with the applicable development standards. Approval of the special exception in this case should be taken as an interim, not final, determination by the Board of Appeals that the planned construction in Phases II and III will meet all development standards applicable at that time. Petitioner must file with the Board of Appeals a valid permit (or permits) issued by DPS for any future construction on the site, and ultimately Petitioner's construction must bring the building within the applicable development standards.
18. The Board will retain jurisdiction for two years after Siena School's operations commence on the site to ensure that the Siena School's activities, in combination with other activities at the site, are not having an unduly adverse effect on the surrounding neighborhood due to traffic, noise, lighting, parking, or the intensity, frequency, or duration of activities. After the first year of operations, Petitioner must have a traffic and parking study done to determine the impacts of the total cumulative number of car trips and parking generated by the regular academic program, the Boys and Girls Club activities, the before and after-school programs and the summer programs, whether or not the traffic exceeds the capacity of the roads. The results of the traffic study must be shared with Technical Staff and NCA, FGCA and SFCCA. It must also be filed with the Board of Appeals. The Board will thereafter schedule a work session to determine whether additional conditions are needed to protect the community.
19. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: March 14, 2012

Respectfully submitted,



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Martin L. Grossman  
Hearing Examiner